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APPENDIX.

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1972
No. 72-702

GOLDEN STATE BOTTLING COMPANY, INC., *et al.*,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITION FOR CERTIORARI FILED NOVEMBER 8, 1972.
CERTIORARI GRANTED FEBRUARY 26, 1973.

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NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

APPENDIX

EXHIBIT 1(f).

Backpay Specification and Notice of Hearing.

United States of America, Before the National Labor Relations Board.

Golden State Bottling Company, Inc. d/b/a Pepsi-Cola Bottling Company of Sacramento and Edward J. Farrell, An Individual and P.C.B.C.E. Inc., Party to the Contract. Case No. 20-CA-2656.

The National Labor Relations Board, having on June 10, 1964, issued an order directing Respondent, Golden State Bottling Company, Inc. d/b/a Pepsi-Cola Bottling Company of Sacramento, to make whole discriminatee Kenneth L. Baker for his losses resulting from Respondent's unfair labor practices in violation of Section 8(a)(3) and (1) of the Act, the United States Court of Appeals for the Ninth Circuit having on November 27, 1968, entered its Decree enforcing in full the backpay provisions of the Board's Order herein, and controversy having arisen over the amount of backpay due under the terms of the Board's Order, the Regional Director of the National Labor Relations Board for the Twentieth Region, pursuant to authority duly conferred upon him by the Board, hereby issues this Backpay Specification and alleges as follows:

1.

The backpay period for Baker begins on August 24, 1963,[1] and continues to run.[2]

---

[1]Baker was terminated on August 16, 1963, but was given one week of vacation pay.

[2]Respondent has not yet offered to reinstate Baker to employment which is substantially equivalent to what he would have had, if he had not been discharged.

2.

An appropriate measure of the gross backpay Baker would have earned from August 24, 1963 through September 30, 1964[3] is the total of the base pay which Respondent paid its driver-salesmen during the period, plus the commissions which Baker might reasonably have earned during that period, plus the Christmas bonus he would have received in December, 1963 plus the value of uniforms which Respondent supplied its driver-salesmen.

(a) From August, 1963 through March 31, 1964, the base pay for driver-salesmen employed by Respondent was $118 per week.

(b) From April 1, 1964 through September 30, 1964, the base pay for driver-salesmen employed by Respondent was $123 per week.

(c) An appropriate measure of the commissions which Baker would have received from sales in each quarter for the period from August 24, 1963 through September 30, 1964, is derived by dividing the commissions which Baker received in the fourth quarter of 1962 and in the first quarter of 1963 by the average total commissions, for the same period, earned by all the driver-salesmen who worked throughout both of those quarters, and then multiplying the quotient resulting from such computation by the average total commissions earned by the driver-salesmen employed by Respondent for each calendar quarter in the period from August 24, 1963 through September 30, 1964. These computations are set forth in attached Appendix A, which is made a part hereof.

---

[3]After September 30, 1964, Baker would have been compensated as a distributor on a straight commission basis. Computations for the backpay period subsequent to September 30, 1964 are set forth in paragraph 5 below and Appendix C.

(d) Baker would have received from Respondent in December, 1963 a Christmas bonus totalling $45.00.

(e) The uniforms which Respondent furnished its driver-salesmen had a fair market value of $8 per quarter.

3.

The gross backpay which Baker would have received each calendar quarter from August 24, 1963 through September 30, 1964 is set forth in Appendix B, which is made a part hereof.

4.

It is reasonable to assume that, absent the unlawful discrimination against Baker, prior to October 1, 1964, Respondent would have offered Baker a distributorship under which he would have been converted from the status of driver-salesman and compensated solely by receipt of a percentage of sales made and that Baker would have accepted this offer effective October 1, 1964.

5.

(a) An appropriate measure of Baker's gross backpay for the period beginning October 1, 1964 and continuing to date is the total of the commissions he would have received as a distributor.

(b) An appropriate measure of the commissions Baker would have received as a distributor is the net earnings received from commissions during the same period by Respondent's distributor Donald Thorne who, at all times material herein, has been comparable to Baker in on-the-job skills and performance.

(c) An appropriate means of determining Thorne's earnings for each quarter through calendar year 1968[4] is to multiply his net total commissions in each calendar year by the quotient obtained when the number of cases of beverage sold by Thorne in each quarter of such year is divided by the total number of cases of beverage he sold in that year.

(d) An appropriate means of estimating Thorne's earnings for each quarter of 1969 is to add Thorne's earnings for the same quarter in each of the preceding years and to divide the sum of these earnings by the number of quarters added.

(e) The computations of net commissions which Baker would have earned for each quarter from October 1, 1964 through June 30, 1969[5] are set forth in attached Appendices C-1 and C-2, which are made a part hereof.

6.

(a) It is admitted that Baker made interim earnings during the backpay period in the amounts set forth in attached Appendix D, which is made a part hereof.

(b) Baker incurred deductible expenses in each quarter of the backpay period in the amounts set forth in attached Appendix D.

(c) Net interim earnings is the difference between interim earnings and deductible expenses as set forth in Appendix D.

---

[4]Thorne's net commissions are only available on a calendar year basis and therefore precise determination of Baker's gross backpay cannot be made subsequent to December 31, 1968. An appropriate means of estimating backpay after December 31, 1968 is alleged in paragraph 5(d).

[5]The backpay period continues to run as alleged in paragraph 1 above but for the purpose of this Specification calculations have been cut off at June 30, 1969.

7.

(a) Baker's net backpay through December 30, 1968 is set forth in Appendix E-1, which is made a part hereof.

(b) Baker's estimated net backpay from January 1, 1969 through June 30, 1969 is set forth in Appendix E-2, which is made a part hereof.

8.

(a) Baker's total net backpay through December 31, 1968 and before applicable tax deductions amounts to $17,148.

(b) Baker's total estimated net backpay from January 1, 1969 through June 30, 1969 amounts to $390.

(c) Baker's backpay continues to run and will continue to run until such time as Respondent offers Baker employment which is substantially equivalent to what he would have had, if he had not been discharged.

Summarizing the facts and calculations specified above, the obligation of Respondent to make whole Baker under the Board Order and the Court Decree will be discharged by payment to Baker of $17,148, plus the total additional net backpay which has accrued since December 31, 1968 and will accrue until Respondent offers Baker reinstatement in accordance with said Order and Decree, plus interest accrued at the rate of six percent (6%) per annum on all unpaid balances of backpay computed for each calendar quarter from the first day of the ensuing quarter until paid in full pursuant to said Order and Decree, minus the tax withholdings required by Federal and State Laws.

PLEASE TAKE NOTICE that on the 16th day of December 1969, at ten o'clock in the forenoon, Pacific Standard Time, in Courtroom No. 2, (Room

2407), Federal District Court, Federal Building, 650 Capitol Mall, Sacramento, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Backpay Specification, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB 4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

YOU ARE FURTHER NOTIFIED that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to the Backpay Specification within fifteen (15) days from the service hereof. To the extent that such Answer fails to deny allegations of the Backpay Specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true, and the Respondent shall be precluded from introducing any evidence controverting them.

DATED AT San Francisco, California, this 30th day of September, 1969.

/s/ Roy O. Hoffman
Roy O. Hoffman, Regional Director
National Labor Relations Board
Region 20
450 Golden Gate Avenue, Box 36047
San Francisco, California 94102

EXHIBIT 1(i).

Answer of Respondent to Backpay Specification.

[Title Omitted in Printing]

COMES NOW, GOLDEN STATE BOTTLING COMPANY, INC. d/b/a PEPSI-COLA BOTTLING COMPANY of Sacramento, Respondent above named, and, for its answer to the Backpay Specification filed herein, admits, alleges and denies as follows:

I.

In answer to the allegations of paragraph 1 thereof, Respondent admits that the backpay period for Baker begins on 24 August, 1963, but denies that said period continues to run, in that:

(a) Respondent, contrary to the Regional Director's assertion, did, on 11 December, 1968, offer to reinstate Baker to employment substantially equivalent to that which he would have had if he had not been terminated and, further,

(b) The Regional Director, by his acts and conduct in the premises is estopped from asserting that Respondent has failed to offer Baker reinstatement to employment which is substantially equivalent to that which he would have had if he had not been terminated, and, further,

(c) To require Respondent to offer to Baker reinstatement to a position in accordance with the Regional Director's contentions (i.e., to an independent distributorship) would be to deprive Respondent of property without due process of law in that the same would force Respondent to admit and acknowledge the validity of the Regional Director's principal contention herein, a contention which is disputed and denied by Respond-

ent, and, in consequence, to admit and acknowledge a liability and responsibility on the part of Respondent which Respondent disputes and denies.

II.

In answer to paragraph 2 thereof, Respondent denies that subsequent to 30 September, 1964, Baker would have been compensated either as a distributor or on a straight commission basis and, therefore, alleges that the appropriate period for the purposes of this paragraph is and should be 24 August, 1963 through 11 December, 1968. Further answering the allegations of said paragraph 2, Respondent denies all and singular, generally and specifically each and every allegation of sub-paragraph (c) thereof, and, in this connection, alleges that the appropriate method for determining the commissions Baker might reasonably have been expected to earn during the period 24 August, 1963 through 11 December, 1968, is, first, to determine the ratio of Baker's case sales to the mean case sales of all full-time driver salesmen on a monthly basis for each of the 14 months of Baker's employment by Respondent and, second, by dividing the sum of said ratios by 14, determine the average ratio of Baker's case sales to the mean case sales of all full-time driver salesmen expressed as a percentage and, third, to apply said percentage to the average commission earnings of the full-time driver salesmen employed by Respondent during the period under review in order to determine the commissions which Baker, with reasonable probability, would have earned during the same period. These computations are set forth in Exhibit "A" attached hereto, and, by this reference, made a part hereof. Respondent admits the remaining allegations of said paragraph 2, to the extent that the same are not denied, or otherwise modified or affected by the foregoing.

III.

In answer to paragraph 3 thereof, Respondent denies all and singular, generally and specifically, each and every allegation thereof, and, in this connection, alleges that the period specified and amounts set forth are inappropriate and incorrect for the reasons hereinabove set forth, and further alleges that the gross pay which Baker might reasonably have been expected to earn during the period 24 August, 1963 through 11 December, 1968 is that set forth in Exhibit "B" attached hereto and, by this reference, made a part hereof.

IV.

In answer to paragraph 4 thereof, Respondent denies, all and singular, generally and specifically, each and every allegation thereof, and every matter, fact and thing therein contained, and, in this connection, specifically denies:

(a) That Baker would have been offered a distributorship by Respondent, or

(b) That independent distributors under contract to Respondent are or ever have been paid compensation by Respondent or that such distributors are, in fact, "compensated solely by receipt of a percentage of sales made", or

(c) That Respondent, in any event, can lawfully be held liable to Baker for any amounts which Baker might have earned as an independent distributor.

V.

In answer to paragraph 5 thereof, Respondent denies all and singular, generally and specifically, each and every allegation thereof, and every matter, fact and thing therein contained. Further answering the allegations

of said paragraph, Respondent avers that the proper method of computing Baker's probable quarterly earnings as a distributor, without in any way admitting or acknowledging that the same is in any way relevant, pertinent or appropriate hereto, or lawfully a proper subject for consideration in this proceeding, would be, first, to determine Baker's estimated case sales as a distributor by applying the ratio obtained by the method described in paragraph II above to the average route case sales of Respondent, and, second, to determine the average net profit per case, during 1968, of the five most successful distributors under contract to Respondent and, third, apply said net-profit-per-case factor to Baker's probable case sales to determine probable net earnings in this connection. The computation to determine Baker's probable case sales is contained in Exhibit "C" attached hereto and, by this reference, incorporated herein; the computation to determine 1968 average net profit per case of the five most successful distributors under contract to Respondent is set forth in Exhibit "D" attached hereto, and, by this reference, incorporated herein; the consequent probable earnings of Baker as a distributor during the period under review, determined in accordance with the method above described is shown in Exhibit "E", attached hereto, and, by this reference, incorporated herein.

VI.

In answer to the allegations of paragraph 6 thereof, Respondent is informed and believes and, therefore, admits that Baker was employed at gainful employment during the backpay period; further answering the allegations thereof, Respondent alleges, however, that it has no information sufficient to enable it to form a belief concerning the amount or character of any earnings

or expenses, whether deductible or otherwise, of Baker during the backpay period, and basing its answer upon said lack of information of belief, Respondent denies, all and singular, generally and specifically, each and every allegation of said paragraph 6.

VII.

In answer to paragraphs 7 and 8 thereof, including the summary of "facts and calculations" immediately following paragraph 8 on page 4 thereof, Respondent denies, all and singular, generally and specifically, each and every allegation thereof. Further answering said paragraphs and allegations, Respondent alleges:

(a) That Baker is entitled to backpay only for the period 24 August, 1963 through 11 December, 1968;

(b) That the only appropriate rate of backpay allowable and payable under law is that set forth in paragraph III of this, Respondent's answer;

(c) That the total gross backpay payable to Baker as so calculated amounts to $38,442;

(d) That even if, as contended, by the Regional Director, it were appropriate to consider Baker's probable earnings as a Distributor (which is disputed and denied by Respondent) during the period 1 October, 1964 through 11 December, 1968, the appropriate gross total which would be as follows:

Driver-Salesmen compensation, 24 August, 1963 —30 September, 1964: $7,213

Independent Distributor Earnings, 1 October, 1964—11 December, 1968: $41,964;

(e) For lack of information sufficient to form a belief thereon, Respondent is unable to allege Baker's net earnings during the backpay period, and is, as a

consequence, unable to aver what, if any, net backpay would be due and payable to Baker; based upon its information and belief, however, Respondent alleges that, for the backpay period, Baker's actual net earnings, in the aggregate exceeds the gross backpay amounts hereinabove set forth, and that, as a consequence, there is no backpay liability to Baker on the part of Respondent.

Dated: 19 Nov. '69.

HODGE, JACKSON, KUMLER & CROSKEY

By /s/ M. B. Jackson

[Affidavit of Service Omitted in Printing]

EXHIBIT 1(k).

Order Rescheduling Hearing.

[Title Omitted in Printing]

IT IS HEREBY ORDERED that the hearing in the above-entitled matter be, and the same hereby is, rescheduled from December 16, 1969, to February 3, 1970, at 10 a.m., Pacific Standard Time, in Courtroom No. 2 (Room 2407), Federal District Court, 650 Capitol Mall, Sacramento, California.

DATED AT San Francisco, California, this 8th day of December, 1969.

/s/ Roy O. Hoffman

Roy O. Hoffman, Regional Director

National Labor Relations Board
Region 20
450 Golden Gate Avenue, Box 36047
San Francisco, California 94102

EXHIBIT 1(m).

Supplemental Backpay Specification and Notice of Hearing.

[Title Omitted in Printing]

The National Labor Relations Board, having on June 10, 1964, issued an order directing Golden State Bottling Company, Inc. d/b/a Pepsi-Cola Bottling Company of Sacramento (herein referred to as Respondent Golden State), its officers, agents, successors and assigns to make whole discriminatee Kenneth L. Baker for his losses resulting from Respondent Golden State's unfair labor practices in violation of Section 8(a)(3) and (1) of the Act, All American Beverages, Inc. d/b/a Pepsi-Cola Bottling Co. of Sacramento (herein referred to as Respondent All American) having on or about January 31, 1968 purchased Respondent Golden State's bottling business under circumstances which render Respondent All American a successor to Respondent Golden State within the meaning of the Board's Order, the United States Court of Appeals for the Ninth Circuit having on November 27, 1968 entered its Decree enforcing in full the backpay provisions of the Board's Order herein, and controversy having arisen over the amount of backpay due under the terms of the Board's Order, the Regional Director of the National Labor Relations Board for the Twentieth Region, pursuant to authority duly conferred upon him by the Board, hereby withdraws the Backpay Specification heretofore issued on September 30, 1969, issues this Supplemental Backpay Specification and alleges as follows:

1.

The backpay period for Baker begins on August 24, 1963,[1] and continues to run.[2]

2.

An appropriate measure of the gross backpay Baker would have earned from August 24, 1963 through September 30, 1964[3] is the total of the base pay which Respondent Golden State paid its driver-salesmen during the period, plus the commissions which Baker might reasonably have earned during that period, plus the Christmas bonus he would have received in December, 1963, plus the value of uniforms which Respondent Golden State supplied its driver-salesmen.

(a) From August, 1963 through March 31, 1964, the base pay for driver-salesmen employed by Respondent Golden State was $118 per week.

(b) From April 1, 1964 through September 30, 1964, the base pay for driver-salesmen employed by Respondent Golden State was $123 per week.

(c) An appropriate measure of the commissions which Baker would have received from sales in each quarter for the period from August 24, 1963 through September 30, 1964 is derived by dividing the commissions which Baker received in the fourth quarter of 1962 and in the first quarter of 1963 by the average total commissions, for the same period, earned by all

---

[1]Baker was terminated on August 16, 1963, but was given one week of vacation pay.

[2]Neither Respondent Golden State nor Respondent All American has offered to reinstate Baker to employment which is substantially equivalent to what he would have had, if he had not been discharged.

[3]After September 30, 1964, Baker would have been compensated as a distributor on a straight commission basis. Computations for the backpay period subsequent to September 30, 1964 are set forth in paragraph 5 below and Appendix C.

the driver-salesmen who worked throughout both of those quarters, and then multiplying the quotient resulting from such computation by the average total commissions earned by the driver-salesmen employed by Respondent Golden State for each calendar quarter in the period from August 24, 1963 through September 30, 1964. These computations are set forth in attached Appendix A, which is made a part hereof.

(d) Baker would have received from Respondent Golden State in December, 1963 a Christmas bonus totalling $45.00.

(e) The uniforms which Respondent Golden State furnished its driver-salesmen had a fair market value of $8 per quarter.

3.

The gross backpay which Baker would have received each calendar quarter from August 24, 1963 through September 30, 1964 is set forth in Appendix B, which is made a part hereof.

4.

It is reasonable to assume that, absent the unlawful discrimination against Baker, prior to October 1, 1964, Respondent Golden State would have offered Baker a distributorship under which he would have been converted from the status of driver-salesman and compensated solely by receipt of a percentage of sales made and that Baker would have accepted this offer effective October 1, 1964.

5.

(a) An appropriate measure of Baker's gross backpay for the period beginning October 1, 1964 and continuing to date is the total of the commissions he would have received as a distributor.

(b) An appropriate measure of the commissions Baker would have received as a distributor is the net earnings received from commissions during the same period by distributor Donald Thorne who, at all times material herein, has been comparable to Baker in on-the-job skills and performance.

(c) An appropriate means of determining Thorne's earnings for each quarter through calendar year 1968[4] is to multiply his net total commissions in each calendar year by the quotient obtained when the number of cases of beverage sold by Thorne in each quarter of such year is divided by the total number of cases of beverage he sold in that year.

(d) An appropriate means of estimating Thorne's earnings for each quarter of 1969 is to add Thorne's earnings for the same quarter in each of the preceding years and to divide the sum of these earnings by the number of quarters added.

(e) The computations of net commissions which Baker would have earned for each quarter from October 1, 1964 through June 30, 1969[5] are set forth in attached Appendices C-1 and C-2, which are made a part hereof.

6.

(a) It is admitted that Baker made interim earnings during the backpay period in the amounts set forth in attached Appendix D, which is made a part hereof.

---

[4]Thorne's net commissions are only available on a calendar year basis and therefore precise determination of Baker's gross backpay cannot be made subsequent to December 31, 1968. An appropriate means of estimating backpay after December 31, 1968 is alleged in paragraph 5(d).

[5]The backpay period continues to run as alleged in paragraph 1 above but for the purpose of this Specification calculations have been cut off at June 30, 1969.

(b) Baker incurred deductible expenses in each quarter of the backpay period in the amounts set forth in attached Appendix D.

(c) Net interim earnings is the difference between interim earnings and deductible expenses as set forth in Appendix D.

7.

(a) Baker's net backpay through December 30, 1968 is set forth in Appendix E-1, which is made a part hereof.

(b) Baker's estimated net backpay from January 1, 1969 through June 30, 1969 is set forth in Appendix E-2, which is made a part hereof.

8.

(a) Baker's total net backpay through December 31, 1968 and before applicable tax deductions amounts to $17,148.

(b) Baker's total estimated net backpay from January 1, 1969 through June 30, 1969 amounts to $390.

(c) Baker's backpay continues to run and will continue to run until such time as Respondent Golden State or Respondent All American offers Baker employment which is substantially equivalent to what he would have had, if he had not been discharged.

9.

(a) Since on or about January 31, 1968, Respondent All American, a Delaware corporation previously incorporated under the name of Sam Snead All American Golf, Inc., has been engaged in the operation of a soft drink bottling plant and in the sale and distribution of soft drinks at wholesale.

(b) During the past calendar year, Respondent All American, in the course and conduct of its business operations described in paragraph 9(a) above, purchased and received goods and services valued in excess of $50,000 directly from points and places located outside the State of California.

(c) Respondent All American is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

10.

At all times material herein, Morton B. Jackson has been an attorney for All American acting as an agent on its behalf within the meaning of Section 2(13) of the Act.

11.

(a) On or about January 31, 1968, Respondent All American purchased all assets and property owned and used by Respondent Golden State in its bottling business in Sacramento, California.

(b) Subsequent to the purchase alleged in paragraph 11(a) above, Respondent All American continued business operations at the bottling plant under the same trade name and at the same location used by Respondent Golden State at the time of said purchase.

(c) Subsequent to the purchase alleged in paragraph 11(a) above, Respondent All American retained the same customer accounts held by Respondent Golden State at the time of said purchase.

(d) Subsequent to the purchase alleged in paragraph 11(a) above, Respondent All American employed all supervisory and managerial personnel and a majority of the employees employed by Respondent Golden State at the time of said purchase.

(e) At all times subsequent to the purchase alleged in paragraph 11(a) above, Gene O. Schilling, General Manager of Respondent Golden State at the time of said purchase as well as at the time of the commission of the unfair labor practices which constitute the subject of this unfair labor practice matter, has been President and General Manager of the division of All American which operates its bottling plant in Sacramento, California.

(f) At all times material herein, All American has been aware of the existence and pendency of the unfair labor practices which constitute the subject of this unfair labor practice matter.

12.

(a) Since on or about January 31, 1968, by virtue of the circumstances alleged in paragraph 11 above, Respondent All American has been, and continues to be, a successor to Respondent Golden State and thereby subject to the Board Order and Court Decree directing Respondent Golden State, its officers, agents, successors and assigns to make whole discriminatee Kenneth L. Baker for his losses resulting from Respondent Golden State's unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

(b) Respondent All American, as a successor to Respondent Golden State, is jointly and severally liable with Respondent Golden State to make Baker whole for all backpay which has accrued and will continue to accrue until such time as Respondent All American or Respondent Golden State offers Baker employment which is substantially equivalent to what he would have had, if he had not been discriminated against by Respondent Golden State.

(e) Respondent All American's obligation under the Board Order and Court Decree will be discharged by the satisfaction of all obligations heretofore alleged as owing by Respondent Golden State in paragraphs one through eight above.

Summarizing the facts and calculations specified above, the obligations of Respondent Golden State and Respondent All American to make whole Baker under the Board Order and the Court Decree will be discharged by payment to Baker of $17,148, plus the total additional net backpay which has accrued since December 31, 1968 and will accrue until Respondent Golden State or Respondent All American offers Baker reinstatement in accordance with said Order and Decree, plus interest accrued at the rate of six percent (6%) per annum on all unpaid balances of backpay computed for each calendar quarter from the first day of the ensuing quarter until paid in full pursuant to said Order and Decree, minus the tax withholdings required by Federal and State Laws.

YOU ARE HEREBY NOTIFIED that, pursuant to Section 102.54 of the Board's Rules and Regulations, Series 8, as amended, Respondent Golden State and Respondent All American shall each file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to this Supplemental Backpay Specification within fifteen (15) days from the service hereof. To the extent that an Answer fails to deny allegations of the Supplemental Backpay Specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed

to be admitted to be true as to Respondent Golden State and/or Respondent All American and the particular Respondent shall be precluded from introducing any evidence controverting them.

PLEASE TAKE NOTICE that on the 3rd day of February, 1970, at 10 a.m., Pacific Standard Time, in Courtroom No. 2 (Room 2407), Federal Building, 650 Capitol Mall, Sacramento, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in this Supplemental Backpay Specification, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB 4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

DATED AT San Francisco, California, this 19th day of December, 1969.

/s/ Roy O. Hoffman

Roy O. Hoffman, Regional Director

National Labor Relations Board
Region 20
450 Golden Gate Avenue, Box 36047
San Francisco, California 94102

APPENDIX A

COMPUTATION OF QUARTERLY COMMISSIONS DUE KENNETH L. BAKER FOR PERIOD AUGUST 24, 1963, THROUGH SEPTEMBER 30, 1964

1962 — 4th Quarter

Commissions earned by Baker — $45.50
Total commissions earned by 15 driver-salesmen — $516.06
Average commission earned by all driver-salesmen — $34.40

1963 — 1st Quarter

Commissions earned by Baker — $73.54
Total commissions earned by 13 driver-salesmen — $492.57
Average commissions earned by all driver-salesmen — $37.89

Total commissions earned by Baker in both quarters ($118.94) divided by average commissions earned by all salesmen in both quarters ($72.29) = 165%

Determination of Ratio: Base Period 1962-4th quarter and 1963-1st quarter

QUARTER	1963-3rd	1963-4th	1964-1st	1964-2nd	1964-3rd
Total commissions for full time drivers	$388.90[1]	$185.65	$507.37	$283.52	$1,654.54
No. of full time drivers	15	16	16	16	18
Average commissions per driver	$ 25.93	$ 11.60	$ 31.71	$ 17.72	$ 91.92
Commissions to be credited to Baker[2]	$ 42.78	$ 19.14	$ 52.32	$ 29.24	$ 151.67

[1]This figure represents the total commissions earned by full-time driver-salesmen ($402.95) less the commissions of driver-salesmen who worked part of the quarter ($14.05).

[2]Average commissions multiplied by ratio of 165%.

APPENDIX B

QUARTERLY GROSS BACKPAY[1] PRIOR TO CREATION OF DISTRIBUTORSHIPS

QUARTER		
1963-3rd[2]	Base pay (5 2/5 weeks x $118/wk.)	$637
	Commissions (from Appendix A)	43
	Uniforms	8
	Total	$688
1963-4th	Base pay (13 weeks x $118/wk.)	$1,534
	Commissions (from Appendix A)	19
	Uniforms	8
	Christmas bonus	45
	Total	$1,606
1964-1st	Base pay (13 weeks x $118/wk.)	$1,534
	Commissions (from Appendix A)	52
	Uniforms	8
	Total	$1,594
1964-2nd	Base pay (13 weeks x $123/wk.)	$1,599
	Commissions	29
	Uniforms	8
	Total	$1,636
1964-3rd	Base pay (13 weeks x $123/wk.)	$1,599
	Commissions	152
	Uniforms	8
	Total	$1,759

[1]Amounts rounded off to closest dollar amount.

[2]From August 24 through September 30.

APPENDIX C-1

Computation of Baker's gross backpay[1] from October 1, 1964 through December 31, 1968, based on the distribution of Thorne's earnings by calendar quarters.

QUARTER	No. of Cases Sold[2]	Percentage by Quarters[3]	Gross Backpay[4]
1964-4th	12.0	100%	$2,920
Total 1964	12.0	100%	$2,920
1965-1st	11.3	21.1	$2,255
-2nd	13.7	25.6	2,736
-3rd	15.3	28.6	3,057
-4th	13.2	24.7	2,640
Total 1965	53.5	100%	$10,688
1966-1st	13.2	23.4	$2,887
-2nd	14.9	26.4	3,257
-3rd	15.7	27.7	3,417
-4th	12.7	22.5	2,776
Total 1966	56.5	100%	$12,337
1967-1st	13.3	22.9	$2,776
-2nd	14.9	25.6	3,104
-3rd	16.7	28.8	3,491
-4th	13.2	22.7	2,752
Total 1967	58.1	100%	$12,123
1968-1st	14.5	21.7	$3,211
-2nd	18.3	27.4	4,054
-3rd	19.2	28.7	4,247
-4th	14.8	22.2	3,285
Total 1968	66.8	100%	$14,797

[1]Amounts rounded off to closest dollar amount.

[2]In 100's.

[3]Cases sold in quarter divided by total cases sold in year.

[4]Annual earnings multiplied by percentage of cases sold each quarter.

APPENDIX C-2

Computation of Baker's estimated gross backpay[1] from January 1, 1969 through June 30, 1969 based on an average of Thorne's earnings for corresponding quarters in calendar years 1965 through 1968.

1969 - 1st Quarter	
1965 - 1st	$2255
1966 - 1st	2887
1967 - 1st	2776
1968 - 1st	3211
TOTAL	$11,129 ÷ 4 Quarters = $2,782
1969 - 2nd Quarter	
1965 - 2nd	$2736
1966 - 2nd	3257
1967 - 2nd	3104
1968 - 2nd	4054
TOTAL	$13,151 ÷ 4 Quarters = $3,288

[1]Amounts rounded off to closest dollar amount.

APPENDIX D

Baker's Net Interim Earnings[1]

Quarter			
1963 - 3rd	Interim Earnings		
	Zellerbach Paper Company	$ 526	
	Teamsters Local 150	176	
	TOTAL		$ 702
	Deductible Expenses		
	Seeking Work (250 miles at 10¢/mi)	$ 25	
	Extra commute (240 miles at 10¢/mi)	20	
	TOTAL	45	
	Less: dues that would have been paid to P.C.B.C.E., Inc.	2	
	NET TOTAL		43
	NET INTERIM EARNINGS		$ 659
1963 - 4th	Interim Earnings		
	Zellerbach Paper Company	$1,403	
	Teamsters Local 150	144	
	Lovotti Bros. Distributors	128	
	TOTAL		$1,675
	Deductible Expenses		
	Seeking Work (200 miles)	$ 20	
	Extra commute (312 miles)	31	
	TOTAL	51	
	Less: dues that would have been paid to P.C.B.C.E., Inc.	6	
	NET TOTAL		45
	NET INTERIM EARNINGS		$1,630
1964 - 1st	Interim Earnings		
	Zellerbach Paper Company		$1,653

[1]Amounts rounded off to closest dollar amount.

	Deductible Expenses		
	Extra commute (312 miles)	$ 31	
	Teamsters reinstatement fee and dues	102	
	TOTAL	133	
	Less: dues that would have been paid to P.C.B.C.E., Inc.	6	
	NET TOTAL		127
	NET INTERIM EARNINGS		$1,526
Quarter			
1964 - 2nd	Interim Earnings		
	Zellerbach Paper Company		$1,664
	Deductible Expenses		
	Extra commute (310 miles)	$ 31	
	Teamster dues	20	
	TOTAL	51	
	Less: dues that would have been paid to P.C.B.C.E., Inc.	6	
	NET TOTAL		45
	NET INTERIM EARNINGS		$1,619
1964 - 3rd	Interim Earnings		
	Zellerbach Paper Company	$1,441	
	Interstate Motor Lines	43	
	Southern California Freight Lines and O-N-C Fast Freight, Inc.	174	
	Arrow Trucking Co.	15	
	Di Salvo Trucking Co.	7	
	TOTAL		$1,680
	Deductible Expenses		
	Extra commute	31	
	Teamster dues	20	
	TOTAL	51	
	Less: dues that would have been paid to P.C.B.C.E., Inc.	6	
	NET TOTAL		45
	NET INTERIM EARNINGS		$1,635

1964 - 4th	Interim Earnings		
	Zellerbach Paper Company	$1,962	
	Southern California Freight Lines and O-N-C Fast Freight, Inc.	190	
	TOTAL		$2,152
	Deductible Expenses		
	Extra commute	31	
	Teamsters dues	20	
	TOTAL[3]		51
	NET INTERIM EARNINGS		$2,101
Quarter			
1965 - 1st	Interim Earnings		
	Zellerbach Paper Company	$1,611	
	Southern California Freight Lines and O-N-C Fast Freight, Inc.	26	
	TOTAL		$1,637
	Deductible Expenses		
	Extra commute	31	
	Teamsters dues	20	
	TOTAL		51
	NET INTERIM EARNINGS		$1,586
1965 - 2nd	Interim Earnings		
	Zellerbach Paper Company		$1,672
	Deductible Expenses		
	Extra commute	31	
	Teamsters dues	20	
	TOTAL		51
	NET INTERIM EARNINGS		$1,621
1965 - 3rd	Interim Earnings		
	Zellerbach Paper Company		$2,107

[3]On and after October 1, 1964, Baker would have been a distributor and thereafter would not have had to pay dues to P.C.B.C.E., Inc.

Quarter				
	Deductible Expenses			
	Extra commute		31	
	Teamsters dues		20	
	TOTAL			51
	NET INTERIM EARNINGS			$2,056
1965 - 4th	Interim Earnings			
	Zellerbach Paper Company			$2,147
	Deductible Expenses			
	Extra commute		31	
	Teamsters dues		20	
	TOTAL			51
	NET INTERIM EARNINGS			$2,096
1966 - 1st	Interim Earnings			
	Zellerbach Paper Company			$1,711
	Deductible Expenses			
	Extra commute		31	
	Teamsters dues		20	
	TOTAL			51
	NET INTERIM EARNINGS			$1,660
1966 - 2nd	Interim Earnings			
	Zellerbach Paper Company			$1,851
	Deductible Expenses			
	Extra commute		31	
	Teamsters dues		20	
	TOTAL			51
	NET INTERIM EARNINGS			$1,800
1966 - 3rd	Interim Earnings			
	Zellerbach Paper Company			$2,439
	Deductible Expenses			
	Extra commute		31	
	Teamsters dues		20	
	TOTAL			51
	NET INTERIM EARNINGS			$2,388

1966 - 4th	Interim Earnings		
	Zellerbach Paper Company		$2,334
	Deductible Expenses		
	Extra commute	31	
	Teamsters dues	23	
	TOTAL		54
	NET INTERIM EARNINGS		$2,280
1967 - 1st	Interim Earnings		
	Zellerbach Paper Company		$1,809
	Deductible Expenses		
	Extra commute	31	
	Teamsters dues	23	
	TOTAL		54
	NET INTERIM EARNINGS		$1,755
Quarter			
1967 - 2nd	Interim Earnings		
	Zellerbach Paper Company	$1,811	
	Pacific Maritime Association	258	
	TOTAL		$2,069
	Deductible Expenses		
	Extra commute	31	
	Teamsters dues	23	
	TOTAL		54
	NET INTERIM EARNINGS		$2,015
1967 - 3rd	Interim Earnings		
	Zellerbach Paper Company		$2,141
	Deductible Expenses		
	Extra commute	31	
	Teamsters dues	23	
	TOTAL		54
	NET INTERIM EARNINGS		$2,087
1967 - 4th	Interim Earnings		
	Zellerbach Paper Company		$2,566

	Deductible Expenses		
	Extra commute	31	
	Teamsters dues	23	
	TOTAL		54
	NET INTERIM EARNINGS		$2,512
1968 - 1st	Interim Earnings		
	Zellerbach Paper Company		$2,134
	Deductible Expenses		
	Extra commute	31	
	Teamsters dues	23	
	TOTAL		54
	NET INTERIM EARNINGS		$2,080
1968 - 2nd	Interim Earnings		
	Zellerbach Paper Company		$2,504
	Deductible Expenses		
	Extra commute	31	
	Teamsters dues	23	
	TOTAL		54
	NET INTERIM EARNINGS		$2,450
Quarter			
1968 - 3rd	Interim Earnings		
	Zellerbach Paper Company		$2,605
	Deductible Expenses		
	Extra commute	31	
	Teamsters dues	23	
	TOTAL		54
	NET INTERIM EARNINGS		$2,551
1968 - 4th	Interim Earnings		
	Zellerbach Paper Company		$2,971
	Deductible Expenses		
	Extra commute	31	
	Teamsters dues	23	
	TOTAL		54
	NET INTERIM EARNINGS		$2,917

1969 - 1st	**Interim Earnings**		
	Zellerbach Paper Company		**$2,329**
	Deductible Expenses		
	Extra commute	**31**	
	Teamsters dues	**23**	
	TOTAL		**54**
	NET INTERIM EARNINGS		**$2,275**
1969 - 2nd	**Interim Earnings**		
	Zellerbach Paper Company		**$2,959**
	Deductible Expenses		
	Extra commute	**31**	
	Teamsters dues	**23**	
	TOTAL		**54**
	NET INTERIM EARNINGS		**$2,905**

APPENDIX E-1

Baker's Net Backpay through December 30, 1968

Quarter	Gross[1] Backpay	Net Interim[2] Earnings	Net[3] Backpay
1963-3rd	688	659	29
1963-4th	1606	1630	—
1964-1st	1594	1526	68
1964-2nd	1636	1619	17
1964-3rd	1759	1635	124
1964-4th	2920	2101	819
1965-1st	2255	1586	669
1965-2nd	2736	1621	1115
1965-3rd	3057	2056	1001
1965-4th	2640	2096	544
1966-1st	2887	1660	1227
1966-2nd	3257	1800	1457
1966-3rd	3417	2388	1029
1966-4th	2776	2280	496
1967-1st	2776	1755	1021
1967-2nd	3104	2015	1089
1967-3rd	3491	2087	1404
1967-4th	2752	2512	240
1968-1st	3211	2080	1131
1968-2nd	4054	2450	1604
1968-3rd	4247	2551	1696
1968-4th	3285	2917	368
		TOTAL	17148

[1]From Appendices B and C.

[2]From Appendix D.

[3]Gross backpay less net interim earnings.

APPENDIX E-2

Baker's estimated backpay from January 1, 1969 through June 30, 1969

Quarter	Gross Backpay[1]	Net Interim Earnings[2]	Net Backpay[3]
1969-1st	$2,782	$2,275	$ 7
1969-2nd	3,288	2,905	383
			$390

[1]From Appendix C-2.
[2]From Appendix D.
[3]Gross backpay less net interim earnings.

EXHIBIT 1(e).

Motion to Amend Case Caption.

[Title Omitted in Printing]

On the 30th day of September, 1969, the Regional Director of the National Labor Relations Board for the Twentieth Region, pursuant to authority duly conferred upon him by the Board, issued a Backpay Specification and Notice of Hearing in the above-captioned case. Subsequent to the issuance of said Backpay Specification, the Regional Office received information, not previously available, indicating that All American Beverages, Inc. d/b/a Pepsi-Cola Bottling Co. of Sacramento, herein referred to as Respondent All American, is a successor to Golden State Bottling Company, Inc. d/b/a Pepsi-Cola Bottling Company of Sacramento, herein referred to as Respondent Golden State, and is thereby subject to the Decree issued on November 27, 1968 by the United States Court of Appeals for the Ninth Circuit enforcing the Board's Order against Golden State, its successors and assigns. After being advised of this additional information, said Regional Director on December 8, 1969 issued an order rescheduling the hearing in this matter from December 16, 1969 to February 3, 1970. On December 19, 1969 said Regional Director withdrew the Backpay Specification previously issued on September 30, 1969 and issued a Supplemental Backpay Specification and Notice of Hearing alleging Respondent All American as a successor to Respondent Golden State and thereby jointly and severally liable with Respondent Golden State for all backpay owing discriminatee Kenneth L. Baker. Wherefore the undersigned Counsel for General Counsel hereby moves to amend the official caption of this matter to read as follows:

GOLDEN STATE BOTTLING COMPANY, INC.

d/b/a PEPSI-COLA BOTTLING COMPANY OF SACRAMENTO and ALL AMERICAN BEVERAGES, INC. d/b/a PEPSI-COLA BOTTLING CO. OF SACRAMENTO,

and

EDWARD J. FARRELL, An Individual

and

P.C.B.C.E., INC., Party to the Contract
Case No. 20-CA-2656

DATED AT San Francisco, California, this 23rd day of December, 1969.

/s/ Douglas H. Barton
Douglas H. Barton
Counsel for the General Counsel
National Labor Relations Board
Twentieth Region
450 Golden Gate Avenue, Box 36047
San Francisco, California 94102

EXHIBIT 1(t).

Answer of Respondents to Supplemental Back Pay Specification.

United States of America, Before the National Labor Relations Board.

Golden State Bottling Company, Inc., d/b/a Pepsi-Cola Bottling Company of Sacramento and All American Beverages, Inc., d/b/a Pepsi-Cola Bottling Co. of Sacramento, and Edward J. Farrell, An Individual and P.C.B.C.E., Inc., Party to the Contract. No. 20-CA-2656.

COME NOW GOLDEN STATE BOTTLING COMPANY, INC., formerly d/b/a PEPSI-COLA BOTTLING COMPANY OF SACRAMENTO, (herein called "Golden State"), and ALL AMERICAN BEVERAGES, INC., presently d/b/a PEPSI-COLA COMPANY OF SACRAMENTO, (herein called "All American"), Respondents above named, and, for their answer to the Supplemental Back Pay Specification filed herein, admit, allege and deny as follows:

I

In answer to the preamble of said Supplemental Back Pay Specification (herein called "Specification"), on Page 1 thereof, Respondents, and each of them,

(a) Allege that Golden State is a California Corporation; that until 31 January, 1968, it was engaged in business in and about the city of Sacramento, California, as a soft drink bottler and distributor of Pepsi-Cola products, doing business under the name Pepsi-Cola Bottling Company of Sacramento; that it is the Respondent originally named herein;

(b) Allege that All American Beverages, Inc., is a Delaware Corporation, having its corporate offices located in Providence, Rhode Island, and its executive offices in Springfield, Ohio; that, in addition to its Sacramento Pepsi-Cola operation described below, it is engaged in the bottling and distribution of Pepsi-Cola and Dr. Pepper products in and about Springfield, Ohio, and in the operation of a Par-3 golf course in San Diego, California; that the officers, shareholders, property and interests of Golden State and All American are wholly separate and distinct and independent one from the other; that until the purchase and sale hereinafter set forth, said Respondents were strangers one to the other;

(c) Allege that on or about 31 January, 1968, All American purchased, effective on said date, all of the assets and property of Golden State constituting its Pepsi-Cola soft drink bottling and distribution business and operation in and around said city of Sacramento; that on and after said date Golden State ceased to have any interest therein, ceased doing business as Pepsi-Cola Bottling Company of Sacramento, and ceased all interest and activity in the soft drink bottling and distribution business; that on and after said date, All American engaged in and carried on the business of Pepsi-Cola soft drink bottler in Sacramento and conducted business under the name and style of "Pepsi-Cola Bottling Co. of Sacramento, a Division of All American Beverages, Inc.";

(d) Allege that the foregoing transaction was a bona-fide sale by Golden State, on the one hand, and purchase by All American, on the other hand; that any liability of Golden State in respect of unfair

labor practices involving Kenneth L. Baker, ("Baker" herein), as alleged, as well as any duty on the part of said Respondent to offer reinstatement to said Baker, ceased and terminated on 31 January, 1968, by virtue of said sale and by virtue of said Respondent's having ceased to engage in the soft drink bottling and distribution business.

(e) Deny, generally and specifically, that All American is a "successor to Respondent Golden State within the meaning of the Board's Order", or that All American is liable in any manner to make said Baker whole in any respect, whether jointly or severally with Golden State or otherwise, or that All American is in any way liable or obligated under or by reason of said Board Order and Court Decree therein alleged.

II

In answer to the allegations of Paragraph 1 of said Specification, Respondents admit that the back pay period for Baker begins on 24 August, 1963, but deny, generally and specifically, that said period continues to run, in that said period terminated on 31 January, 1968, by reason of the facts and circumstances alleged in Paragraph 1 hereof; Respondents further deny, generally and specifically, the allegations contained in Footnote 2 to said Paragraph 1.

III

In answer to Paragraph 2 of said Specification, Respondents deny that subsequent to 30 September, 1964, Baker would have been compensated either as a distributor or on a straight commission basis and, therefore, allege that the appropriate period for the purposes of this paragraph is and should be 24 August, 1963 to 31 January, 1968. Further answering the al-

legations of said Paragraph 2, Respondents deny, all and singular, generally and specifically, each and every allegation of subparagraph (c) thereof, and, in this connection, allege that the appropriate method for determining the commissions Baker might reasonably have expected to earn during the aforementioned period, is, first, to determine the ratio of Baker's case sales to the mean case sales of all full time driver-salesmen on a monthly basis for each of the fourteen months of Baker's employment by Golden State and, second, by dividing the sum of said ratios by fourteen (14), to determine the average ratio of Baker's case sales to the mean case sales of all full time driver-salesmen expressed as a percentage and, third, to apply said percentage of the average commission earnings of the full time driver-salesmen employed by Golden State during said period in order to determine the commissions which Baker, with reasonable probability would have earned during the same period. These computations are set forth in Exhibit "A" attached hereto, and, by this reference, made a part hereof. Respondents admit the remaining allegations of said Paragraph 2, to the extent that the same are not denied or otherwise modified or affected by the foregoing.

IV

In answer to Paragraph 3 of said Specification, Respondents deny, all and singular, generally and specifically, each and every allegation thereof, and, in this connection, allege that the period specified and the amounts set forth are inappropriate and incorrect for the reasons hereinabove and hereinbelow set forth, and further allege that the gross pay which Baker might reasonably have been expected to earn during the

period 24 August, 1963 through 31 January, 1968, is that set forth in Exhibit "B" attached hereto and, by this reference, made a part hereof.

V

In answer to Paragraph 4, of said Specification, Respondents deny, all and singular, generally and specifically, each and every allegation thereof, and every matter, fact and thing therein contained, and, in this connection, specifically deny:

(a) That Baker would have been offered a distributorship by Golden State, or

(b) That independent distributors under contract to Golden State are or ever have been paid compensation by Golden State, or that such distributors are or ever have been, in fact, "compensated solely by receipt of a percentage of sales made", or

(c) That Respondents, or either of them, in any event, can lawfully be held liable to Baker for any amounts which Baker might have earned as an independent distributor.

VI

In answer to Paragraph 5 thereof, Respondents deny, all and singular, generally and specifically, each and every allegation thereof and every matter, fact and thing therein contained. Further answering the allegations of said Paragraph, Respondents, without any way admitting or acknowledging that the same is in any manner relevant, pertinent or appropriate hereto, or lawfully a proper subject for consideration in this proceeding, aver that the proper method of computing Baker's probable quarterly earnings as a distributor (assuming for the sake of argument that the same was

pertinent or proper, which is denied) would be first, to determine Baker's estimated case sales as a distributor by applying the ratio obtained by the method described in Paragraph III above to the average route case sales of Golden State and, second, to determine the average net profits per case, during 1968, of the five most successful distributors and, third, to apply said net-profit-per-case factor to Baker's probable case sales in order to determine probable net earnings in this connection. The computation to determine Baker's probable case sales in this manner is contained in Exhibit "C" attached hereto and, by this reference, incorporated herein; the consequent probable earnings of Baker as a distributor during the period under review, determined in accordance with the method above described, is shown in Exhibit "E" attached hereto and, by this reference, incorporated herein.

VII

In answer to the allegations of Paragraph 6 of said Specification, Respondents allege that they are informed and believe and, therefore, admit that Baker was employed at gainful employment during the back pay period; further answering the allegations thereof, Respondents allege, however, that they have no information sufficient to enable them to form a belief concerning the amount or character of any earnings or expenses, whether deductible or otherwise, of Baker during the back pay period (other than the allegations contained in said Specification) and basing their answer upon said lack of information or belief, Respondents deny, all and singular, generally and specifically, each and every allegation of said Paragraph 6.

VIII

In answer to Paragraphs 7 and 8 of said Specification, Respondents deny, all and singular, generally and specifically, each and every allegation thereof. Further answering said paragraphs and allegations, Respondents allege:

(a) That Baker is entitled to back pay only for the period 24 August, 1963, through 31 January, 1968;

(b) That the only appropriate rate of back pay allowable and payable under law is that set forth in Paragraph IV of this, Respondents' Answer;

(c) That the total gross back pay payable to Baker as so calculated amounts to $31,610.00;

(d) That even if, as contended by the Regional Director, it were appropriate to consider Baker's probable earnings as a distributor (which is disputed and denied by Respondents) during the period 1 October, 1964 through 31 January, 1968, the appropriate gross total would be as follows:

Driver-Salesman Compensation, 24 August, 1963-30 September, 1964:	$ 7,208.00
Independent Distributor earnings, 1 October, 1964-31 January, 1968:	32,264.00

(e) For lack of information sufficient to form a belief thereon, Respondents are unable to allege Baker's net earnings during the back pay period and are, as a consequence, unable to aver precisely what, if any, net back pay would be due and payable to Baker; based upon their information and belief, however, Respondents allege that, for the back pay period, Baker's actual net earnings, in the aggregate, exceed the gross back pay amounts hereinabove set forth and that, as a consequence, there exists no liability for net back pay to Baker.

IX

In answer to Paragraph 10 of said Specification, Respondents deny, all and singular, generally and specifically, each and every allegation of said Paragraph.

X

In answer to the allegations of Paragraph 11 of said Specification, Respondents

(a) Admit the allegations of subparagraph (a) thereof;

(b) Allege that on and subsequent to 31 January, 1968, All American did business in Sacramento under the trade name and style of "Pepsi-Cola Bottling Company of Sacramento, a Division of All American Beverages, Inc.", utilizing the location formerly used by Golden State at the time of said purchase; that All American retained substantially the same customer accounts held by Golden State at the time of the purchase alleged in subparagraph (a) of said paragraph 11; that subsequent to said purchase, All American employed a majority of the employees and some, but not all, of the supervisory and managerial personnel employed by Golden State at the time of said purchase;

(c) Admits the allegations of subparagraph (c) of said paragraph 11, and, further allege that said Schilling at no pertinent time, owned or controlled any proprietary interest in Golden State or All American and that said Schilling is not and never has been an officer or director of All American.

(d) Save and except as hereinabove admitted or alleged, Respondents deny, all and singular, generally and specifically, each and every allegation of said Paragraph 11.

XI

In answer to the allegations of Paragraph 12 of said Specification, Respondents deny, all and singular, generally and specifically, each and every allegation contained in said Paragraph and the summary immediately following.

Dated: 16 January, 1970.

JACKSON, KUMLER, COPES & CROSKEY

By /s/ Morton B. Jackson

Morton B. Jackson, Attorneys for Respondents.

EXHIBIT A

COMPUTATION OF COMMISSIONS

Year/Month	(1) Total Plant Case Sales	(2) No. of Men	(3) Mean Case Sales Per Man	(4) Baker's Case Sales	(4) : (3) As a Percent
1962					
July	54622	17	3213	3787	117.9
August	56721	17	3336	4308	129.1
September	43572	17	2563	3198	124.8
October	38766	17	2280	3052	133.9
November	40482	17	2381	3138	131.8
December	37018	17	2177	2890	132.8
1963					
January	35639	17	2097	2788	133.0
February	36937	17	2173	2782	128.0
March	40384	17	2375	3039	128.0
April	46729	17	2749	3560	129.5
May	40796	17	2400	3193	133.0
June	49334	19	2596	2983	114.9
July	59614	19	3137	3496	111.4
August	61075	19	3214	3532	109.9
				MEAN:	125.6%

Year				1963	1963
Quarter				3rd	4th
Total Commissions for full time salesmen				388.90	185.65
Number of full time salesmen				15	16
Average Commissions for full time salesmen				2593	11.60
Commission to be credited to Baker (125.6% of Ave.)				3257	14.70
Year	1964	1964	1964	1964	
Quarter	1st	2nd	3rd	4th	
Total Commissions for full time salesmen	507.37	283.52	1654.59	528.20	
Number of full time salesmen	16	16	18	9	

Average Commissions for full time salesmen	31.71	17.72	91.92	58.69
Commissions to be credited to Baker (125.6% of Ave.)	39.83	22.26	115.45	73.71

COMPUTATION OF COMMISSIONS

	Year	1965	1965	1965	1965
	Quarter	1st	2nd	3rd	4th
1.	Total Commissions for full time salesmen	389.84	178.56	261.24	282.65
2.	Number of full time salesmen	7	6	7	6
3.	Average Commissions for full time salesmen	55.69	29.76	37.32	47.11
4.	Commissions to be credited to Baker (125.6% of Ave.)	69.95	37.38	46.87	59.17

	Year	1966	1966	1966	1966
	Quarter	1st	2nd	3rd	4th
1.	Total Commissions for full time salesmen	359.90	678.70	374.00	129.70
2.	Number of full time salesmen	5	4	4	2
3.	Average Commissions for full time salesmen	71.98	169.68	93.50	64.85
4.	Commissions to be credited to Baker (125.6% of Ave.)	90.41	213.12	117.44	81.45

	Year	1967	1967	1967	1967
	Quarter	1st	2nd	3rd	4th
1.	Total Commissions for full time salesmen	-0-	-0-	645.06	321.06
2.	Number of full time salesmen			5	5
3.	Average Commissions for full time salesmen			129.01	64.21
4.	Commissions to be credited to Baker (125.6% of Ave.)	-0-	-0-	162.04	80.65

Year	1968
Quarter	1st
1. Total Commisions for full time salesmen	-0-
2. Number of full time salesmen	
3. Average Commissions for full time salesmen	
4. Commissions to be credited to Baker (125.6% of Ave.)	-0-

EXHIBIT B

QUARTERLY GROSS BACKPAY COMPUTATION

(Rounded to Nearest Dollar)
Periods Indicated

Quarter	Base Pay		Commissions (Exhibit A)	Uniforms	Christmas Bonus	Total for Quarter
1963						
3rd	5-2/5 weeks at 118.00	637	33	3		673
4th	13 weeks at 118.00	1,534	15	8	45	1,602
1964						
1st	13 weeks at 118.00	1,534	40	8		1,582
2nd	13 weeks at 123.00	1,599	22	8		1,629
3rd	13 weeks at 123.00	1,599	115	8		1,722
4th	13 weeks at 123.00	1,599	74	8	75	1,756
1965						
1st	13 weeks at 123.00	1,599	70	8		1,677
2nd	13 weeks at 128.00	1,664	37	8		1,709
3rd	13 weeks at 128.00	1,664	47	8		1,719
4th	13 weeks at 128.00	1,664	59	8	105	1,836
1966						
1st	13 weeks at 128.00	1,664	90	8		1,842
2nd	13 weeks at 133.00	1,729	213	8		1,950
3rd	13 weeks at 133.00	1,729	117	8		1,854
4th	13 weeks at 133.00	1,729	81	8	135	1,953
1967						
1st	13 weeks at 133.00	1,729	—	8		1,737
2nd	13 weeks at 138.50	1,801	—	8		1,809
3rd	13 weeks at 138.50	1,801	162	8		1,971
4th	13 weeks at 138.50	1,801	81	8	165	2,055
1968						
1st	4 weeks at 138.50	554		3		557

EXHIBIT C

BAKER'S PROBABLE CASE SALES

Periods Indicated

Month	FOURTH QUARTER 1964 Oct.	Nov.	Dec.
Total Cases	49,517	33,651	42,076
No. of Men	17	16	15
Average Cases Sold	2,913	2,103	2,805
Baker's Case Sales (125.6% of Ave.)	3,659	2,641	3,523
Total for Quarter			9,823

Month	FIRST QUARTER 1965 Jan.	Feb.	Mar.	SECOND QUARTER 1965 Apr.	May	Jun.
Total Cases	34,576	39,481	49,522	49,508	51,674	55,017
No. of Men	15	15	15	15	15	16
Average Cases Sold	2,305	2,632	3,301	3,301	3,445	3,439
Baker's Case Sales (125.6% of Ave.)	2,895	3,306	4,146	4,146	4,327	4,319
Total for Quarter			10,347			12,792

Month	THIRD QUARTER 1965 Jul.	Aug.	Sept.	FOURTH QUARTER 1965 Oct.	Nov.	Dec.
Total Cases	63,714	65,631	54,914	53,348	46,235	41,151
No. of Men	16	16	16	17	16	15
Average Cases Sold	3,982	4,102	3,432	3,138	2,890	2,743
Baker's Case Sales (125.6% of Ave.)	5,001	5,152	4,311	3,941	3,630	3,445
			14,464			11,016

Month	FIRST QUARTER 1966 Jan.	Feb.	Mar.	SECOND QUARTER 1966 Apr.	May	Jun.
Total Cases	40,879	38,066	51,233	55,208	67,389	70,078
No. of Men	14	14	14	14	16	16

EXHIBIT B

QUARTERLY GROSS BACKPAY COMPUTATION

(Rounded to Nearest Dollar)
Periods Indicated

Quarter	Base Pay		Commissions (Exhibit A)	Uniforms	Christmas Bonus	Total for Quarter
1963						
3rd	5-2/5 weeks at 118.00	637	33	3		673
4th	13 weeks at 118.00	1,534	15	8	45	1,602
1964						
1st	13 weeks at 118.00	1,534	40	8		1,582
2nd	13 weeks at 123.00	1,599	22	8		1,629
3rd	13 weeks at 123.00	1,599	115	8		1,722
4th	13 weeks at 123.00	1,599	74	8	75	1,756
1965						
1st	13 weeks at 123.00	1,599	70	8		1,677
2nd	13 weeks at 128.00	1,664	37	8		1,709
3rd	13 weeks at 128.00	1,664	47	8		1,719
4th	13 weeks at 128.00	1,664	59	8	105	1,836
1966						
1st	13 weeks at 128.00	1,664	90	8		1,842
2nd	13 weeks at 133.00	1,729	213	8		1,950
3rd	13 weeks at 133.00	1,729	117	8		1,854
4th	13 weeks at 133.00	1,729	81	8	135	1,953
1967						
1st	13 weeks at 133.00	1,729	—	8		1,737
2nd	13 weeks at 138.50	1,801	—	8		1,809
3rd	13 weeks at 138.50	1,801	162	8		1,971
4th	13 weeks at 138.50	1,801	81	8	165	2,055
1968						
1st	4 weeks at 138.50	554		3		557

EXHIBIT C

BAKER'S PROBABLE CASE SALES

Periods Indicated

Month	FOURTH QUARTER 1964 Oct.	Nov.	Dec.
Total Cases	49,517	33,651	42,076
No. of Men	17	16	15
Average Cases Sold	2,913	2,103	2,805
Baker's Case Sales (125.6% of Ave.)	3,659	2,641	3,523
Total for Quarter			9,823

Month	FIRST QUARTER 1965 Jan.	Feb.	Mar.	SECOND QUARTER 1965 Apr.	May	Jun.
Total Cases	34,576	39,481	49,522	49,508	51,674	55,017
No. of Men	15	15	15	15	15	16
Average Cases Sold	2,305	2,632	3,301	3,301	3,445	3,439
Baker's Case Sales (125.6% of Ave.)	2,895	3,306	4,146	4,146	4,327	4,319
Total for Quarter			10,347			12,792

Month	THIRD QUARTER 1965 Jul.	Aug.	Sept.	FOURTH QUARTER 1965 Oct.	Nov.	Dec.
Total Cases	63,714	65,631	54,914	53,348	46,235	41,151
No. of Men	16	16	16	17	16	15
Average Cases Sold	3,982	4,102	3,432	3,138	2,890	2,743
Baker's Case Sales (125.6% of Ave.)	5,001	5,152	4,311	3,941	3,630	3,445
			14,464			11,016

Month	FIRST QUARTER 1966 Jan.	Feb.	Mar.	SECOND QUARTER 1966 Apr.	May	Jun.
Total Cases	40,879	38,066	51,233	55,208	67,389	70,078
No. of Men	14	14	14	14	16	16

EXHIBIT C (continued)

Average Cases Sold	2,920	2,719	3,660	3,943	4,212	4,380
Baker's Case Sales (125.6% of Ave.)	3,668	3,415	4,597	4,952	5,290	5,501
Total for Quarter			11,680			15,743

	THIRD QUARTER 1966			FOURTH QUARTER 1966		
Month	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.
Total Cases	62,681	81,144	66,726	59,783	51,890	44,307
No. of Men	15	16	16	16	16	14
Average Cases Sold	4,179	5,072	4,170	3,736	3,243	3,165
Baker's Case Sales (125.6% of Ave.)	5,249	6,370	5,238	4,692	4,073	3,975
Total for Quarter			16,857			12,746

	FIRST QUARTER 1967			SECOND QUARTER 1967		
Month	Jan.	Feb.	Mar.	Apr.	May	Jun.
Total Cases	50,591	50,417	62,966	43,362	80,202	79,625
No. of Men	16	16	16	17	18	19
Average Cases Sold	3,162	3,151	4,198	2,551	4,456	4,191
Baker's Case Sales (125.6% of Ave.)	3,971	3,958	5,273	3,204	5,597	5,264
Total for Quarter			13,202			14,065

	THIRD QUARTER 1967			FOURTH QUARTER 1967		
Month	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.
Total Cases	83,659	95,976	69,781	62,641	57,652	54,847
No. of Men	19	19	19	18	18	18
Average Cases Sold	4,403	5,051	3,673	3,480	3,203	3,047
Baker's Case Sales (125.6% of Ave.)	5,530	6,344	4,613	4,371	4,023	3,827
Total for Quarter			16,487			12,221

Jan. 1968	
Total Cases	57,403
No. of Men	18
Average Cases Sold	3,189
Baker's Case Sales (125.6% of Ave.)	4,005

EXHIBIT D

AVERAGE NET PROFIT PER CASE
TOP FIVE DISTRIBUTORS
1968

Distributors	Cases Sold	Total Net Profit	Net Profit Per Case
Thorne	66,814	14,797.00	$0.2215
Harwood	65,353	8,444.99	0.1292
McHann	64,578	12,558.12	0.1945
Foster	60,481	11,843.59	0.1958
Murray	58,890	10,525.30	0.1787
		MEAN	$0.1839

EXHIBIT E

BAKER'S ESTIMATED EARNINGS AS A DISTRIBUTOR
Periods Indicated

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Year:	1964	1964	1964	1964
Baker's Estimated Case Sales (Exhibit C)				9,823
Baker's Estimated Net Profit per case (Exhibit D)				.1839
Baker's Estimated Earnings				$1,806
Year:	1965	1965	1965	1965
Baker's Estimated Case Sales (Exhibit C)	10,347	12,792	14,464	11,016
Baker's Estimated Net Profit per case (Exhibit D)	.1839	.1839	.1839	.1839
Baker's Estimated Earnings	$1,903	$2,352	$2,660	$2,026
Year:	1966	1966	1966	1966
Baker's Estimated Case Sales (Exhibit C)	11,680	15,743	16,857	12,740
Baker's Estimated Net Profit per case (Exhibit D)	.1839	.1839	.1839	.1839
Baker's Estimated Earnings	$2,148	$2,895	$3,100	$2,343
Year:	1967	1967	1967	1967
Baker's Estimated Case Sales (Exhibit C)	13,202	14,065	16,487	12,221
Baker's Estimated Net Profit per case (Exhibit D)	.1839	.1839	.1839	.1839
Baker's Estimated Earnings	$2,428	$2,587	$3,032	$2,247

BAKER'S ESTIMATED EARNINGS AS A DISTRIBUTOR

Periods Indicated

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Year:	1968 (Jan.)			
Baker's Estimated Case Sales (Exhibit C)	4,005			
Baker's Estimated Net Profit per case (Exhibit D)	.1839			
Baker's Estimated Earnings	$ 737			

[Affidavit of Service Omitted in Printing]

Trial Examiner's Supplemental Decision.

The Trial Examiner's Supplemental Decision (as adopted without modification or explanation by the National Labor Relations Board in its "Supplemental Decision and Order" set forth below) is set forth at length in the Appendix to the Petition for Certiorari, page one thereof, and is incorporated herein by reference. The Decision of the Trial Examiner, together with the decision of the Board, has been cumulatively referred to throughout the opening brief as the "Supplemental Decision."

Supplemental Decision and Order.

United States of America, Before the National Labor Relations Board.

Golden State Bottling Company, Inc. d/b/a Pepsi-Cola Bottling Company of Sacramento and All American Beverages, Inc. d/b/a Pepsi-Cola Bottling Co. of Sacramento[1] and Edward J. Farrell, An Individual and P.C.B.C.E., Inc., Party to the Contract. Case 20—CA—2656.

On June 10, 1964, the National Labor Relations Board issued its Decision and Order in the above-entitled proceeding,[2] finding that the Respondent Golden State Bottling Company, Inc. d/b/a Pepsi-Cola Bottling Company of Sacramento, had discriminatorily discharged Kenneth L. Baker in violation of Section 8(a)(3) and (1) of the National Labor Relations Act, as

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[1]At the opening of the hearing upon unopposed motion of the General Counsel, the caption was amended to include All American Beverages, Inc.

[2]147. NLRB 410.

amended, and directing that Golden State Bottling Company, Inc., offer to him immediate and full reinstatement to his former or substantially equivalent position and make him whole for any loss of earnings suffered by reason of the discrimination against him. On December 2, 1965, the United States Court of Appeals for the Ninth Circuit issued its decision[3] enforcing, *inter alia*, the Board's Order with respect to Baker. Because of a request by the Board for rehearing and other intervening factors, the court issued its final decree enforcing in full the Board's Order with respect to Baker on November 27, 1968.

A Backpay Specification and Notice of Hearing and a Supplemental Backpay Specification and Notice of Hearing were issued by the Regional Director for Region 20, and pursuant thereto a hearing was held on February 3 and 4, 1970, before Trial Examiner Robert L. Piper for a determination of the amounts of backpay due the above-named discriminatee, and the designation of liability for reinstatement and backpay.

On July 13, 1970, the Trial Examiner issued the attached Supplemental Decision finding that the discriminatee was entitled to reinstatement by the successor-employer as indicated and to the amounts of backpay therein set forth, and that the Respondents are jointly and severally liable for said backpay. Thereafter, each Respondent filed exceptions and a supporting brief,[4] and the General Counsel filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National

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[3] *N.L.R.B. v. Golden State Bottling Company, Inc.*, 353 F.2d 667.

[4] Respondent, All American Beverages, Inc., filed a supplemental brief which we have considered as part of its original brief.

Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Supplemental Decision, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings,* conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that Respondent Golden State Bottling Company, Inc. d/b/a Pepsi-Cola Bottling Company of Sacramento, and Respondent All American Beverages, Inc. d/b/a Pepsi-Cola Bottling Co. of Sacramento, Sacramento, California, their officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

Dated, Washington, D.C. January 21, 1971.

Edward B. Miller, Chairman
Gerald A. Brown, Member

*These findings are based, in part, upon credibility determinations of the Trial Examiner to which the Respondents have excepted. After careful review of the record, we conclude that these credibility findings are not contrary to the clear preponderance of all relevant evidence. Accordingly, we find no basis for disturbing these findings. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 188 F.2d 362 (C.A. 3).

Howard Jenkins, Jr., Member
NATIONAL LABOR RELATIONS
BOARD
(SEAL)

Opinion of the United States Court of Appeals for the Ninth Circuit.

The Opinion of the United States Court of Appeals for the Ninth Circuit is contained within the Appendix to the Petition for Writ of Certiorari, commencing on page 32 thereof.

Judgment.

The proposed Judgment of the United States Court of Appeals for the Ninth Circuit is contained within the Appendix to the Petition for Writ of Certiorari, commencing on page 37 thereof.

EXHIBIT 15(a).

AGREEMENT made January 31, 1968, by and between GOLDEN STATE BOTTLING CO., a California corporation doing business as "Pepsi-Cola Bottling Co. of Sacramento" (the "Seller") and SAM SNEAD ALL AMERICAN GOLF, INC., a Delaware corporation (the "Buyer").

The Seller is willing to sell to the Buyer, and the Buyer desires to purchase from the Seller certain of the assets and properties of the Seller as a going concern on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements hereinafter set forth, the parties hereto agree as follows:

1. *Purchase and Sale.* On the terms and subject to the conditions set forth in this Agreement, the Seller hereby agrees to sell and deliver to Buyer, and Buyer agrees to purchase from the Seller, free and clear of all liens, charges and encumbrances, all of the assets and property owned by the Seller and used in the bottling business of the Seller ("said Bottling Business") conducted in Sacramento, California (other than the Retained Assets, as hereinafter defined), wherever located, real, personal or mixed, tangible or intangible, as the same shall exist on the Closing Date (as hereinafter defined) and all books and records relating to said Bottling Business of the Seller (collectively the "Purchased Assets"):

1.1 All of the real property relating to said Bottling Business and all of the right, title and interest of the Seller of every kind and description whatsoever in, or relating to, such real property (including leaseholds and easements of every

kind) including particularly, but not by way of limitation, the real estate of the Seller located at 1100 Q Street in the City of Sacramento, in the State of California, with all buildings, structures, fixtures and other improvements now erected upon or attached to said real estate (hereinafter collectively the "Real Estate").

1.2 All plant and office machinery, equipment, tools, furniture, furnishings, fixtures, appliances, vending machines, coolers, apparatus, automobiles, trucks, trailers, automotive accessories, repair parts, other transportation equipment, and other physical property relating to said Bottling Business, including without limitation all property described in Schedule A attached hereto and made a part hereof (hereinafter collectively the "Fixed Assets").

1.3 All raw materials, bottles, cans, cases, goods in process, product and syrup inventories, plant and office supplies, repair materials, and all other inventories and supplies wherever situated relating to said Bottling Business (hereinafter the "Inventories"), subject, however, to the rights of others to bottles and cases in the field.

1.4 All claims, demands, judgments, causes of action, rights, choses in action, insurance policies (other than life insurance or insurance relating to pension plans) including the cash surrender value thereof, agreements, leases, contracts, franchises, appointments, orders, commitments, claims, trademarks and trademark agreements, the name "Pepsi-Cola Bottling Co. of Sacramento" and other slogans or trade names relating to said Bottling Business, including without limitation bot-

tling and syrup appointments listed in Schedule B attached hereto and made a part hereof, and all operating data, books, records, customers lists relating to said Bottling Business and the business and good will of said Bottling Business as a going concern of the Seller (hereinafter the "Intangible Property").

1.5 All prepaid and deferred items, such as prepaid rentals, taxes, insurance and unbilled charges relating to said Bottling Business (hereinafter the "Prepaid Items").

From and after the Closing Date, all books, records and documents of the Seller acquired by the Buyer hereunder shall be available during regular business hours to the officers, attorneys, accountants and other authorized representatives of the Seller as may be reasonably necessary in connection with the business and affairs of the Seller prior to the Closing Date. The Buyer shall maintain and preserve all such books, records and other documents and shall not dispose of any of the same on or prior to December 31, 1972, without the prior written consent of the Seller.

All sales, transfer and documentary taxes, if any, in connection with the sale and delivery of the Purchased Assets hereunder shall be paid by the Seller.

2. *Purchase Price.* The purchase price payable by the Buyer to the Seller for the Purchased Assets shall be $1,600,000 payable as follows:

2.1 $450,000 to be paid in cash on the Closing Date.

2.2 $150,000 to be paid in cash on October 1, 1968.

2.3 $1,000,000 to be paid by the delivery on the Closing Date of a promissory note of the Buyer in form satisfactory to the Seller payable in sixty (60) equal consecutive monthly installments of principal of $16,666.66 each commencing February 1, 1973. Such note shall provide for interest at the rate of 6% per annum on the unpaid balance payable monthly commencing March 1, 1968. Such note will permit prepayment in whole or in part at any time after the first year following the date thereof, any such prepayment to be applied in inverse order of maturity. [G.C.] Such note will be secured by a deed of trust with respect to all of the Real Estate running to Transamerica Title Insurance Company. Such deed of trust will provide that the Buyer may demand a reconveyance to it of the property subject to the deed of trust, in the event the Buyer sells the Real Estate for at least $350,000 and agrees that the full proceeds from such sale will be applied to the prepayment of such note. Such note will also be secured by a Financing Statement and Security Agreement in form satisfactory to the Seller creating a first lien on the Fixed Assets. Such note will also be secured by a pledge with the Bank of Sacramento, Sacramento, California, of the franchises included in the Intangible Property, and such pledge shall be referred to in such Financing Statement and Security Agreement. Such pledge of such franchises will be subject to the approval of the transfer of such franchises by Pepsico, Inc. The Buyer understands that the Seller may assign its rights to such note and the documents securing

payment thereof to a bank to be selected by the Seller and agrees that in the event of such assignment, the Buyer will make all payments required by such note directly to the bank if so desired by the Seller. Such note shall provide that it will become immediately due and payable in the event the Buyer fails to make the payments when due under the agreements described in Section 12.6.

3. *Retained Assets.* The Seller shall not transfer but shall retain the following assets:

3.1 All cash and amounts on deposit with bank accounts.

3.2 All accounts and notes receivable.

3.3 The Chris Craft boat "Miss Pepsi".

3.4 All assets of Seller that do not relate to or are not used in said Bottling Business.

4. *Assumption of Certain Liabilities.* On the Closing Date, Buyer shall assume and agrees to perform and discharge the following obligations of Seller as they shall exist on the Closing Date:

4.1 Liabilities with respect to the Intangible Property.

4.2 Liabilities under conditional sales contracts or leases for equipment, including without limitation coolers and vending machines.

Except as expressly provided herein, Buyer shall not be obligated to assume or become liable for any obligations or liabilities of Seller, including, without limitation, any liability for vacation pay. The Seller shall pay as soon as possible all accrued vacation pay to January 31, 1968, directly to the employees in cash.

5. *Access to Plants, Properties and Records.* From and after the date of this Agreement, Seller shall afford to the officers, attorneys, accountants and other authorized representatives of Buyer free and full access to the plants, properties, books and records of Seller, in order that Buyer may have full opportunity to make such investigation as it shall desire to make of the affairs of Seller, provided that such investigation shall not unreasonably interfere with its operations.

6. *Continuance of Existing Plans.* The Buyer agrees to continue for the present time existing group life, Workmen's Compensation, product liability, health plans and other insurance coverage. The Buyer will not assume the Seller's Pension Plan, and the Seller will terminate the rights of all employees of the business being transferred pursuant to this Agreement under the Pension Plan as of January 31, 1968.

7. *The Closing.* The purchase and sale provided for in this Agreement (the "Closing") shall be made at the office of Messrs. Diepenbrock, Wulff & Plant, 455 Capital Mall, Sacramento, California, or at such other place as the parties shall mutually agree upon, at 11 a.m., on February 19, 1968, or on such other time and date as the parties shall mutually agree upon (the "Closing Date"). The Closing shall be effective as of the close of business on January 31, 1968. Said Bottling Business shall be operated for the benefit of the Buyer from and after the close of business on January 31, 1968. The Buyer shall receive the benefits of, or suffer the burden of, and shall reflect on its income tax returns for the period commencing with the close of business on January 31, 1968, any profit or loss of said Bottling Business from and after the close of business on January 31, 1968.

8. *Instruments of Transfer.* At the Closing on the Closing Date, Seller shall deliver to Buyer:

8.1 A grant deed or deeds to vest in Buyer good and marketable title to the Real Estate, free and clear of all liens and encumbrances other than rights, rights of way and easements of record heretofore disclosed to Buyer and the lien of current county and municipal taxes and municipal water charges not yet delinquent, together with a title report from Transamerica Title Insurance Company in form satisfactory to counsel for the Buyer.

8.2 Bills of sale with covenants of warranty, endorsements, assignments and other good and sufficient instruments of transfer, conveyance and assignment, in form satisfactory to Buyer, as shall be effective to vest in Buyer good and marketable title, free and clear of all liens and encumbrances to the Purchased Assets (other than the Real Estate), subject, however, to the rights of others with respect to bottles and cases in the field. The Buyer does not warrant the fitness, quality or usability of the Purchased Assets.

8.3 All of the documents relating to the Intangible Property, with consents to the assignment thereof where required.

Simultaneously with such delivery, Seller shall take all such steps as may be requisite to put Buyer in actual possession and operating control of the Purchased Assets.

9. *Certain Action by Seller.* Prior to the Closing, Seller will not, except with the prior written consent of Buyer:

9.1 Make any general wage or salary increases or enter into any employment contracts;

9.2 Mortgage, pledge, or subject to lien, or any other encumbrance, any of the Purchased Assets;

9.3 Lease or transfer any tangible assets, except in the ordinary course of business;

9.4 Sell, assign or transfer any licenses, patents, trademarks, trade names or other intangible assets;

9.5 Enter into any transaction or incur any obligations, other than in the ordinary course of business;

9.6 Waive or release any rights of a material value; or

9.7 Declare any dividend or make any payment or distribution to its shareholders or purchase or redeem any shares.

10. *Representations and Warranties of Seller.* Seller represents and warrants:

10.1 *Corporate Authority:* The execution and delivery to the Buyer of this Agreement, and the sale contemplated hereby, have been duly authorized by the Board of Directors and the stockholders of Seller at meetings duly called and held.

10.2 *Title to Properties:* Seller has or will have at or prior to the Closing Date good and marketable title in fee simple to all of the Real Estate, and owns outright all other properties and assets included among the Purchased Assets, except as otherwise provided in this Agreement; the Purchased Assets are free and clear of all liens and encumbrances other than rights, rights of way and easements of record heretofore disclosed to Buyer and the lien of current local taxes not yet delinquent, but subject to such minor defects in title

as are of a nature generally found in properties of similar character but which do not in any material way affect the marketability of the same or interfere with the operations of said Bottling Business. All plants and other buildings included among the Purchased Assets conform in all material respects to all applicable building and zoning laws, ordinances and regulations.

10.3 *Plants, Buildings, Machinery and Equipment:* All plants, buildings, machinery and equipment included among the Purchased Assets are in good operating condition, free from any known defects except such minor defects as do not interfere with the continued use thereof in the conduct of the normal operations of the Seller.

10.4 *Leases and Contracts:* There are no material leases, licenses, contracts or agreements relating to or affecting the business of the Seller or the Purchased Assets other than those set forth in Schedule B; all such leases, licenses, contracts and agreements are either assignable by Seller or proper consents to the assignment thereof will be obtained by Seller on or before the Closing; and Seller has complied with all the provisions of said leases, licenses, contracts and agreements and is not in default in any material respect under any of them.

10.5 *Litigation:* There are no actions, suits, proceedings or investigations pending against Seller, or to its knowledge threatened against it, that relate to or would adversely affect said Bottling Business.

11. *Representations and Warranties of Buyer.*

11.1 *Corporate Authority:* The execution and delivery to the Seller of this Agreement, and the

purchase contemplated hereby have been duly authorized by the Board of Directors of the Buyer at a meeting duly called and held.

12. *Conditions to Obligations of Buyer.* The obligations of Buyer under this Agreement are, at its option, subject to the fulfillment, on or before the Closing Date, of each of the following conditions precedent:

12.1 Between the date hereof and the Closing Date, the Seller shall have operated said Bottling Business only in the usual, regular and ordinary course of business, and shall have used its best efforts to preserve said Bottling Business intact in its present condition.

12.2 The Seller shall have maintained the Purchased Assets in customary repair, order and condition, reasonable wear and use excepted, and the Purchased Assets shall have suffered no substantial damage prior to the Closing Date whether by fire or other unavoidable casualty.

12.3 Seller shall have performed and complied with all terms, covenants and conditions required by this Agreement to be performed or complied with on or before the Closing Date.

12.4 The representations and warranties of Seller contained in this Agreement shall be true and correct as of the Closing Date with the same force and effect as though such representations and warranties had been made as of the Closing Date, except to the extent that such representations and warranties shall be incorrect as of the Closing Date because of events and changes (not materially adversely affecting the business of Seller or the Purchased Assets) occurring or arising after the date hereof in the ordinary course of business.

12.5 Seller shall have delivered to Buyer a certificate of its President or Vice President, dated the Closing Date, certifying as to the fulfillment of the conditions set forth in Sections 12.1 through 12.4.

12.6 E. J. Crofoot, C. E. Eeales and E. J. Crofoot, II shall each have entered an agreement with the Buyer whereby they each agree not to compete with said Bottling Business of the Buyer and to consult and otherwise assist the Buyer in the conduct of said Bottling Business for a period of ten years after the Closing Date in consideration of the payment by the Buyer to each of them at the rate of $50,000, $5,000 and $45,000, respectively.

12.7 E. G. Schilling, William Schilling and George Steres shall have agreed to be employed by the Buyer for a period of one year after the Closing Date as General Manager, Assistant General Manager and Production Manager, respectively, at monthly salaries of $1,500, $1,200 and $1,500, respectively.

12.8 Pepsi-Cola Company shall have agreed to the assignment and transfer by the Seller to the Buyer of all of the appointments and franchises included in the Purchased Assets and the pledge thereof as provided for in this Agreement.

13. *Conditions to Obligations of Seller.* The obligations of Seller under this Agreement are, at its option, subject to the fulfillment, on or before the Closing Date, of each of the following conditions precedent:

13.1 Buyer shall have performed and complied with all terms, covenants and conditions required by this Agreement to be performed or complied with on or before the Closing Date.

13.2 Buyer shall have delivered to Seller a certificate of its President or Vice President, dated the Closing Date, certifying as to the fulfillment of the conditions set forth in Section 13.1.

13.3 Narragansett Capital Corporation shall have subordinated all of the indebtedness of the Buyer to Narragansett Capital Corporation to any indebtedness of the Buyer to the Seller by a Subordination Agreement in form satisfactory to counsel for the Seller. It is understood that such Subordination Agreement shall permit the payment by the Buyer of interest when due on its indebtedness to Narragansett Capital Corporation so long as there shall be no default in connection with the indebtedness of the Buyer to the Seller. Narragansett Capital Corporation shall have appointed a local attorney for service of process in the State of California.

14. *Miscellaneous.*

14.1 Buyer and Seller each represents to the other that there are no claims for brokerage commissions or finders' fees in connection with the transactions contemplated by this Agreement, and Seller agrees to hold the Buyer harmless with respect to any such fees.

14.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14.3 The representations and warranties of each of the parties and all agreements by them contained herein shall survive the Closing Date, and delivery of documents at that time pursuant to this Agreement.

14.4 The Buyer hereby waives compliance with the so-called Bulk Sales Act provisions of the Uniform Commercial Code.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

Attest:

/s/ Gene G. Schilling
Secretary

Attest:

/s/ C. P. Williamson
Ass't. Secretary

GOLDEN STATE BOTTLING CO.
/s/ By E. J. Crofoot

SAM SNEAD ALL AMERICAN GOLF, INC.
/s/ By Harry J. Sartes, Vice President

EXHIBIT 15B.

Instrument of Transfer and Assignment and Assumption of Liabilities.

KNOW ALL MEN BY THESE PRESENTS:

That GOLDEN STATE BOTTLING CO., a corporation organized and existing under the laws of the State of California (hereinafter called the "Seller"), for Ten Dollars ($10.00) and other valuable consideration to it paid by SAM SNEAD ALL AMERICAN GOLF, INC., a corporation organized and existing under the laws of said State of Delaware (hereinafter called the "Buyer"), the receipt whereof is hereby acknowledged by the Seller, has conveyed, granted, bargained, sold, transferred, set over, assigned, delivered and confirmed and by these presents does hereby convey, grant, bargain, sell, transfer, set over, assign, deliver and confirm unto the Buyer, its successors and assigns, forever, subject to all mortgages, liens, encumbrances, liabilities, obligations, charges and contingencies, if any, with respect thereto, all the assets and properties now owned by the Seller and used in its business of bottling Pepsi-Cola, wherever located, real, personal or mixed, tangible or intangible, as the same shall exist at the commencement of business on the effective date hereof, and all books and records relating to the business, specifically excluding any other assets or properties of the Seller not constituting part of or used in its business of bottling Pepsi-Cola, but including particularly (but without intending thereby in any manner to limit the foregoing general language) all the following assets and properties:

1.1. All the real property used in the business of the Seller and all the right, title, interest, estate and ap-

purtenances of the Seller of every kind and description whatsoever in, or in any way relating to, such real property (including leaseholds and chattels, real, easements and servitudes of every kind) and including particularly, but not by way of limitation, the real estate of the Seller located at 1100 Q Street in the City of Sacramento, California, with all buildings, structures, fixtures and other improvements now erected upon or attached to said real estate (hereinafter collectively "the Real Estate").

1.2. All plant and office machinery, equipment, tools, furniture, furnishings, fixtures, appliances, vending machines, coolers, apparatus, automobiles, trucks, trailers, automotive accessories, repair parts, other transportation equipment and other physical property owned by the Seller including without limitation all property described in Schedule A attached hereto and made a part hereof (hereinafter collectively "the Fixed Assets").

1.3. All raw materials, bottles, cans, cases, goods in process, product and syrup inventories, plant and office supplies, repair materials, and all other inventories and supplies, wherever situated (hereinafter "the Inventories").

1.4. All claims, demands, judgments, causes of action, rights, choses in action, insurance policies, including the cash surrender value thereof, all agreements, leases, contracts, franchises, appointments, orders, commitments, claims, trademarks and trademark agreements, the name "Pepsi-Cola Bottling Co. of Sacramento" and other slogans or trade names, including without limitation bottling and syrup appointments listed in Schedule B attached hereto and made a part hereof, and all operating data, books, records, custom-

ers lists, and the business and good will as a going concern of the Seller (hereinafter "the Intangible Property").

1.5 All prepaid and deferred items, such as prepaid rentals, taxes, insurance and unbilled charges (hereinafter the "Prepaid Items").

TO HAVE AND TO HOLD the same to the Buyer, its successors and assigns, forever, on the following terms:

The Seller agrees that, at any time and from time to time after the date hereof, it will, upon the request and at the expense of the Buyer, do, execute, acknowledge and deliver or will cause to be done, executed, acknowledged and delivered all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be required for the better assigning, transferring, granting, conveying, assuring and confirming to the Buyer or for aiding and assisting in the collection of, or the reduction to possession, any or all of the assets and properties assigned, transferred, conveyed and delivered, or to be assigned, transferred, conveyed and delivered, to the Buyer hereunder.

The Seller hereby names and irrevocably constitutes and appoints the Buyer, its successors and assigns, the true and lawful attorney or attorneys of the Seller, with full power of substitution, in the name of the Buyer or in the name of the Seller but on behalf of and for the benefit and at the expense of the Buyer, its successors and assigns, to demand and receive from time to time any and all assets and properties hereby assigned, transferred, conveyed and delivered to the Buyer; to give receipts, releases and acquittances for and in respect of the same or any part thereof; to

collect, for the account of the Buyer all receivables and other items transferred to the Buyer as provided herein, and to endorse with the name of the Seller any checks received on account of any such receivables or other items; from time to time to institute and prosecute, in the name of the Seller or otherwise but at the expense and for the benefit of the Buyer, its successors and assigns, any and all proceedings at law, in equity or otherwise which the Buyer, its successors or assigns, may deem proper in order to collect, assert or enforce any claim, right, title or interest of any kind in or to the assets or properties hereby assigned, transferred, conveyed and delivered, or intended so to be, to defend or compromise any and all actions, suits or proceedings in respect of any of said assets or properties and to do all such acts and things in relation thereto as the Buyer, its successors or assigns, shall deem desirable. The Seller hereby declares that the foregoing powers are coupled with an interest and are and shall be irrevocable by the Seller or by its dissolution or in any manner or for any reason. The Seller hereby authorizes the Buyer to retain for its own account any amounts collected pursuant to the foregoing powers, including any sums payable as interest in respect thereof, and the Seller hereby agrees to hold for the benefit of and to pay to the Buyer any amounts which shall be received by the Seller in respect of any receivables or other items transferred to the Buyer as provided herein. The Seller hereby further agrees to cooperate with the Buyer upon the request and at the expense of the Buyer, in the preparation and prosecution of any such claims.

Nothing in this instrument shall be construed as an attempt to assign (a) any contract which is in law

nonassignable without the consent of the other party or parties thereto, unless such consent shall have been given or (b) any contract or claim as to which all the remedies for the enforcement thereof enjoyed by the Seller would not, as a matter of law, pass to the Buyer as an incident of the assignments made hereby until the Buyer shall in writing have notified the Seller of its desire that this instrument operate as an assignment of such contract or claim. In order, however, that the full value of every contract and claim of the character described in clauses (a) and (b) of the next preceding sentence and all claims and demands on such contracts may be realized for the benefit of the Buyer, the Seller hereby covenants with the Buyer that it will, by itself or by its agents, at the request and expense and under the direction of the Buyer, in the name of the Seller or otherwise as the Buyer shall specify and as shall be permitted by law, take all such action and do or cause to be done all such things as shall in the opinion of the Buyer be necessary or proper (i) in order that the obligations of the Seller under such contracts may be performed in such manner that the value of such contracts shall be preserved and shall inure to the benefit of the Buyer and (ii) for, and to facilitate, the collection of the moneys due and payable, and to become due and payable, to the Seller in and under every such contract and claim and in respect of every such claim and demand; and the Seller hereby covenants promptly to pay over to the Buyer all moneys collected by or paid to it in respect of every such contract, claim or demand.

And the Buyer, in consideration of the covenants of the Seller hereinbefore contained and other valuable considerations to it paid by the Seller,—the receipt

of which is hereby acknowledged,—for itself and for its successors and assigns, does hereby covenant and agree with the Seller, its successors and assigns, that it, the Buyer, will assume, undertake, pay, satisfy, discharge and perform those legally enforceable debts, liabilities, obligations and contracts of every kind of the Seller outstanding at the commencement of business on the effective date hereof and as specifically set forth in Schedule X attached hereto and made a part hereof, and will indemnify, save harmless and exonerate the Seller, its successors and assigns, from and against all actions, claims and demands in respect thereto.

Regardless of the generality of the foregoing assignment, the Seller shall not transfer but shall retain the following assets:

All cash and amounts on deposit with bank accounts.

All accounts and notes receivable.

The Chris Craft boat "Miss Pepsi".

All assets of Seller that do not relate to or are not used in said Bottling Business.

Item 1.3 of this agreement is subject to the rights of others to bottles and cases in the field.

This instrument shall be effective at the commencement of business on February ...., 1968, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF on the 19th day of February, 1968, Golden State Bottling Co. and Sam Snead All American Golf, Inc., have caused these presents and one counterpart hereof to be executed in their respective names and behalf by their respective officers, thereunto duly authorized, and their respective corporate

seals to be hereunto and to said counterpart affixed by their respective officers, thereunto duly authorized.

GOLDEN STATE BOTTLING CO. (Seller)

By .....

SAM SNEAD ALL AMERICAN GOLF, INC. (Buyer)

By .....

State of California, County of .....

In Sacramento on the ..... day of February, 1968, before me personally appeared the above-named ..... the ..... of Golden State Bottling Co., to me known and known by me to be the person executing the foregoing instrument for and in behalf of said corporation, and he acknowledged said instrument by him executed to be his free act and deed in his said capacity and the free act and deed of said corporation.

(Notary Public)

State of California, County of Sacramento.

In Sacramento on the ..... day of February, 1968, before me personally appeared the above named Harvey J. Sarles, the Vice President of Sam Snead All American Golf, Inc. to me known and known by me to be the person executing the foregoing instrument for and in behalf of said corporation and he acknowledged said instrument by him executed to be his free act and deed in his said capacity and the free act and deed of said corporation.

(Notary Public)

EXHIBIT 15C.

SCHEDULE X.

(Bill of Sale).

Agreement between Golden State Bottling Co. of Sacramento, (Seller) and Sam Snead All American Golf, Inc. (Buyer), made as of January 31, 1968.

LIABILITIES TO BE ASSUMED BY BUYER

Payable to Pepsi-Cola Equipment Corporation:	
Conditional Sales Contracts for fountain and vending equipment and related parts—total owed by seller, less portion to be paid by seller ($4,719.10)	$16,260.00
Lease agreement for fountain and vending equipment and related parts:	
Total owed by seller, less portion to be paid by seller, ($3,131.85)	$13,376.21
Conditional Sales Contracts for Visa Coolers:	$34,601.85
Sub Total	$64,238.06
Office Equipment purchase contracts:—	
$13.89 per month for 12 months	166.68
$83.25 per month for 25 months	$ 2,081.25
	$66,485.99

RESPONDENT'S EXHIBIT 4.

Pepsi-Cola Bottling Co. of Sacramento
1100 Q Street, Sacramento, California 95814
Telephone: 444-7134

To Whom it may Concern:

Pursuant to #29 of the Distributors Agreements between the undersigned distributors and the "Bottler" Pepsi Cola Bottling Co. of Sacramento, we individually hereby consent to the assignment of the agreements by the Bottler, to Sam Snead All American Golf, Inc.. D.B.A. Pepsi Cola Bottling Co. of Sacramento.

Dale Flemmer /s/ Dale Flemmer

Bob Foster /s/ Robert Foster

Doug Fusco /s/ Douglas A. Fusco

Don Glavich /s/ Donald Glavich

Cliff Harwood /s/ Clifford Harwood

Myrel McHann /s/ Myrel L. McHann

Jerry Miller /s/ Jerry Miller

Dave Murray /s/ Dave Murray

Jeff Sampo /s/ Jeff P. Sampo

Don Thorne /s/ Donald R. Thorne

John Whisler /s/ John Whisler

Feb. 19th, 1968

EXHIBIT 19.

Golden State Bottling Company
1100 "Q" Street
Sacramento, California

November 14, 1968

William B. Luck, Esq.
Clerk of the United States Court
of Appeals for the Ninth Circuit
P. O. Box 547
San Francisco, California

Re: No. 19,803—NLRB vs. Golden State Bottling Company, Inc., d/b/a Pepsi Cola Bottling Company of Sacramento (C.A. 9) Board Case No. 20-CA-2656

Dear Sir:

Pursuant to earlier advices through our counsel, Hodge, Jackson, Kumler & Croskey, we enclose herewith the original and three copies of an executed Substitution of Attorneys in the above matter. Also enclosed is an Affidavit of Service by Mail.

Yours very truly,
GENE SCHILLING
General Manager

GS:ek

cc: Marcel Mallet-Prevost, Esq.
Assistant General Counsel
National Labor Relations Board
Washington, D. C. 20570

Roy O. Hoffman, Director
Region 20 NLRB
450 Golden Gate Ave. Box 36047
San Francisco, California 36003
Le Prohn & LeProhn [sic]
315 Montgomery Street
San Francisco, California

Substitution of Attorneys.

United States Court of Appeals, for the Ninth Circuit.

National Labor Relations Board, Petitioner, v. Golden State Bottling Company, Inc., d/b/a Pepsi-Cola Bottling Company of Sacramento, Respondent. No. 19,-803.

Respondent GOLDEN STATE BOTTLING COMPANY, INC. d/b/a PEPSI-COLA BOTTLING COMPANY OF CALIFORNIA, hereby substitutes HODGE, JACKSON, KUMLER & CROSKEY, 1901 Avenue of the Stars, Suite 1651, Los Angeles, California, 90067, Telephone 277-0200, as attorneys of record in place and stead of HILL, FARRER & BURRILL, 445 South Figueroa Street, Los Angeles, California.

Dated: November 14, 1968.

GOLDEN STATE BOTTLING COMPANY, INC.
d/b/a PEPSI-COLA BOTTLING COMPANY OF SACRAMENTO
By /s/ Gene G. Schilling

I consent to the above substitution.

Dated: November 11, 1968.

HILL, FARRER & BURRILL
By /s/ Kyle D. Brown

Above Substitution accepted.

Dated: November 13, 1968.

HODGE, JACKSON, KUMLER & CROSKEY
By /s/ M. B. Jackson

[Affidavit of Service Omitted in Printing]

EXHIBIT 16A.

November 18, 1969

Mr. Gene G. Schilling, President
Pepsi-Cola Bottling Company
1100 Que [sic] Street
Sacramento, California 95814

Re: Pepsi-Cola Bottling Company
Case No. 20-CA-2656

Dear Mr. Schilling:

Your attorney, Mr. Jackson, has advised me to contact you for details of the sale of the Pepsi-Cola Bottling Company in February 1968. As you are aware, this office had assumed until quite recently that the business continued to be owned by Golden State Bottling Company, Inc. In order to clarify the existing situation in regard to possible liability for backpay, I would like a copy of the purchase agreement under which the asset sale of February 1968 was made. In addition, and for the same purpose, I would appreciate your answering the following questions:

(1) At the time of the asset sale, were normal business operations interrupted for any period of time?

(2) Did the new owners continue to do business with the same customers?

(3) Did the new owners retain all of the same employees employed by Golden State? If not, how many old employees were retained and how many new employees were hired? When were the new employees hired?

(4) What supervisory and managerial personnel were retained by the new owners? How many new supervisors were hired and when?

(5) How many corporate officers of Golden State assumed positions with the new owners? What positions?

I would greatly appreciate it if you could provide me with this information as soon as possible. I am sure you share my desire to bring this matter to an early and final determination. Thank you for your cooperation.

Very truly yours,
Douglas H. Barton
Attorney

cc: Morton B. Jackson, Esq.
Hodge, Jackson, Kimbler [sic] & Croskey
1901 Avenue of the Stars, Suite 1651
Los Angeles, California 90067

EXHIBIT 16B.

Pepsi-Cola Bottling Company/Sacramento
1100 Que Street—Sacramento, California 95814
Telephone (916) 444-7134

November 28, 1969

Mr. Douglas H. Barton
450 Golden Gate Ave., Box 36047
San Francisco, California 94102

Dear Mr. Barton:

Enclosed is a copy of the purchase agreement covering the asset sale of the Pepsi-Cola Bottling Co. by Golden State Bottling Co.

In answer to your questions:

(1) Normal business operations were not interrupted.

(2) We did continue to do business with the same customers.

(3) All employees were retained with the exception of two that were not needed and one that was not satisfactory. The one replacement was accomplished on February 1, 1969.

(4) All supervisory and managerial personnel were retained and no new supervisors were hired.

(5) One corporate officer assumed a position with the new owners. Gene G. Schilling as President of this division.

I apologize for this information being so slow in reaching you, but I have been away from my desk and just now returned.

Very truly yours,
/s/ Gene G. Schilling
Gene G. Schilling,
President

GGS/de
Enclosure
cc: Morton B. Jackson, Esq.

EXHIBIT 20.

December 9, 1968

Golden State Bottling Co., Inc. d/b/a
Pepsi-Cola Bottling Company of Sacramento
1100 "Q" Street
Sacramento, California

Re: Golden State Bottling Co., Inc., d/b/a
Pepsi-Cola Bottling Company of Sacramento
Case No. 20-CA-2656

Gentlemen:

After consulting your attorney, Mr. Morton B. Jackson, I am enclosing copies of the Notice to All Employees for signing and posting at your establishments in accordance with the terms of the Decree of the United States Court of Appeals.

Please also return to this office one signed and dated copy of this Notice. Please also complete and return one copy of the enclosed Certificate of Posting.

You will note that the Court Decree calls for an offer of reinstatement to Kenneth L. Baker. I suggest that this offer be made in writing. Please mail this office a copy of the offer and later inform us of the response made to the offer. I understand that Mr. Jackson will be in touch with you about this. Mr. Baker's address is 6633 Dawson Way, Sacramento, California.

A Board Agent will visit your premises during the 60-day posting period to verify that the Notice is properly posted.

If there are any questions regarding the above, please do not hesitate to call or write me.

Very truly yours,
M. C. Dempster
Compliance Officer

Enclosures

cc: Attn. Mr. Jim Dyar
Teamsters 150
2525 Stockton Blvd., Sacramento

cc: Morton B. Jackson, Esq.
1901 Avenue of the Stars, Suite 1651
Los Angeles, California 90067

cc: P.C.B.C.E., Inc.
Attn: Mr. James Steen, Pres.
6817 Mira Court
Sacramento, California

cc: Allan B. O'Connor, Esq.
Luther & O'Connor
950 Fulton Avenue
Sacramento, California

cc: Edward J. Farrell
3515 Broadway
Sacramento, California

cc: LeProhn & LeProhn
315 Montgomery Street
San Francisco, California

cc: Kenneth L. Baker
6633 Dawson Way
Sacramento, California

Petitioners Exhibit 1.

December 11, 1968

Mr. Kenneth L. Baker
6633 Dawson Way
Sacramento, California

Dear Mr. Baker:

We hereby offer to re-instate you to the former, or substantially equivalent position—namely a route driver, that you once had with the Pepsi-Cola Bottling Company. The pay scale is $145.43 per week, and is not entitled to overtime.

Kindly notify us immediately if you wish to accept this position. We will keep the offer open for five days. In the event that we do not hear from you by the close of business on Tuesday, December 17, 1968, we will make other arrangements.

Yours very truly,
PEPSI-COLA BOTTLING CO.
Gene G. Schilling
President

GGS:cw

cc: Morton B. Jackson, Esq.
1901 Avenue of the Stars
Los Angeles, California 90067

cc: M. C. Dempster
450 Golden Gate Ave. Box 35047
San Francisco, California 94102

EXHIBIT 21A.

Certificate of Posting.

NATIONAL LABOR RELATIONS BOARD
Region 20
450 Golden Gate Avenue, Box 36047
San Francisco, California 94102

PLEASE RETURN THIS CERTIFICATE, DULY SIGNED AND WITNESSED, TO THE NATIONAL LABOR RELATIONS BOARD. ALSO, PLEASE RETURN A COPY OF THE NOTICE, SIGNED AND DATED LIKE THE POSTED COPY, OR COPIES.

Re: Golden State Bottling Company, Inc. d/b/a
Pepsi-Cola Bottling Company of Sacramento
Case No 20-CA-2656

The undersigned hereby states that a copy or copies of the Notice required to be posted in the above-entitled case, were posted by me, personally, in the following places: (List below the place or places where copies were posted.)

Posted: 11 day of December 1968

1. Employees Bulletin Board

/s/ Gene G. Schilling
/s/ Gene G. Schilling
/s/ President
/s/ Billie J. Linker
(Witness)

EXHIBIT 21B.

NOTICE TO ALL EMPLOYEES PURSUANT TO

A Judgment of the United States Court of Appeals Enforcing in part and denying in part an Order of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act (as amended) we hereby notify our employees that:

WE WILL NOT interfere with the administration of P.C.B.C.E., Inc., or any other labor organization by suggesting to the employee members thereof that they elect new officers.

WE WILL NOT bargain collectively with persons other than the authorized bargaining committee of P.C.B.C.E., Inc., so long as P.C.B.C.E., Inc. is and remains the acknowledged majority representative of the employees for collective bargaining purposes.

WE WILL NOT discharge, or otherwise discriminate in respect to the hire and tenure of employment of any employee for the purpose of discouraging activity on behalf of P.C.B.C.E., Inc., or CHAUFFEURS, TEAMSTERS & HELPERS, LOCAL 150, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, or any other labor organization, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their

right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of mutual aid or protection as guaranteed in Section 7 of the Act, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL offer to KENNETH L. BAKER immediate and full reinstatement to his former or substantially equivalent position and make him whole for any loss of pay resulting from the discrimination against him.

GOLDEN STATE BOTTLING COMPANY, INC., d/b/a PEPSI-COLA BOTTLING COMPANY OF SACRAMENTO
(Employer)

Dated Dec. 11, 1968.

By Gene G. Schilling (Title) President.

NOTE: We will notify Kenneth L. Baker if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 450 Golden Gate Avenue, Box 36047, San Francisco, California 94102. Telephone (415) 556-0335.

PETITIONERS' EXHIBIT 18A.

Pepsi-Cola Bottling Company / Sacramento
1100 Que Street, Sacramento, California 95814
Telephone (916) 444-7134

January 22, 1969

Mr. M. G. Dempster
450 Golden Gate Avenue
Box 36047
San Francisco, Calif. 94102

Dear Mr. Demptster:

Thank you for being so patient.

As I explained on the phone, our 1962 payroll records were lost in the fire at our plant. However, this is our base pay schedule for route salesmen from June of 1962 to the present date.

June 1962 $115.00

April 1963 raised to $118.00 per week

April 1964 raised to $123.00 per week

April 1965 raised to $128.00 per week

April 1966 raised to $133.00 per week

April 1967 raised to $138.50 per week

April 1968 raised to $145.43 per week

Also enclosed is a commission schedule of all route salesman starting with the last quarter of 1962 through the last quarter of 1968. This schedule shows the starting and terminating date of all route salesmen and the total route salesmen commission paid by quarters.

I trust this information is satisfactory. However, If I may be of any further service, please advice me.

Sincerely

PEPSI-COLA BOTTLING CO.

/s/ Gene G. Schilling

Gene G. Schilling

President

GS/JL

Enclosure

EXHIBIT 2.

APPENDIX B

QUARTERLY GROSS BACKPAY[1] PRIOR TO CREATION OF DISTRIBUTORSHIPS

QUARTER			
1963-3rd[2]	Base pay (5 2/5 weeks X $118/wk.)		$537
	Commissions (from Appendix A)		33
	Uniforms		8
		Total	$678
1963-4th	Base pay (13 weeks X $118/wk.)		$1,534
	Commissions (from Appendix A)		15
	Uniforms		8
	Christmas bonus		45
		Total	$1,602
1964-1st	Base pay (13 weeks X $118/wk.)		$1,534
	Commissions (from Appendix A)		40
	Uniforms		8
		Total	$1,582
1964-2nd	Base pay (13 weeks X $123/wk.)		$1,599
	Commissions		22
	Uniforms		8
		Total	$1,629
1964-3rd	Base pay (13 weeks X $123/wk.)		$1,599
	Commissions		115
	Uniforms		8
		Total	$1,722

[1]Amounts rounded off to closest dollar amount.
[2]From August 24 through September 30.

EXHIBIT 3.

APPENDIX C-1

Computation of Baker's gross backpay[1] from October 1, 1964 through December 31, 1968, based on the distribution of Thorne's earnings by calendar quarters.

QUARTER	No. of Cases Sold[2]	Percentage by Quarters[3]	Gross Backpay[4]
1964-4th	12.0	100%	$2,700
Total 1964	12.0	100%	$2,700
1965-1st	11.3	21.1	$2,412
-2nd	13.7	25.6	2,927
-3rd	15.3	28.6	3,269
-4th	13.2	24.7	2,824
Total 1965	53.5	100%	$11,432
1966-1st	13.2	23.4	$2,838
-2nd	14.9	26.4	3,201
-3rd	15.7	27.7	3,359
-4th	12.7	22.5	2,728
Total 1966	56.5	100%	$12,126
1967-1st	13.3	22.9	$2,708
-2nd	14.9	25.6	3,027
-3rd	16.7	28.8	3,406
-4th	13.2	22.7	2,685
Total 1967	58.1	100%	$11,826
1968-1st	14.5	21.7	$3,081
-2nd	18.3	27.4	3,891
-3rd	19.2	28.7	4,076
-4th	14.8	22.2	3,153
Total 1968	66.8	100%	$14,201

[1]Amounts rounded off to closest dollar amount.

[2]In 100's.

[3]Cases sold in quarter divided by total cases sold in year.

[4]Annual earnings multiplied by percentage of cases sold each quarter.

EXHIBIT 24.

APPENDIX C-2

Computation of Baker's estimated gross backpay[1] from January 1, 1969 through June 30, 1969 based on an average of Thorne's earnings for corresponding quarters in calendar years 1965 through 1968.

1969-1st Quarter	
1965-1st	$2412
1966-1st	2838
1967-1st	2708
1968-1st	3081
TOTAL	$11,039 ÷ 4 Quarters = $2,760

1969-2nd Quarter	
1959-2nd	$2927
1966-2nd	3201
1967-2nd	3027
1968-2nd	3891
TOTAL	$13,046 ÷ 4 Quarters = $3,262

[1]Amounts rounded off to closest dollar amount.

EXHIBIT 4.

APPENDIX E-1

Baker's Net Backpay through December 30, 1968

Quarter	Gross[1] Backpay	Net Interim[2] Earnings	Net[3] Backpay
1963-3rd	678	659	19
1963-4th	1602	1630	—
1964-1st	1582	1526	56
1964-2nd	1629	1619	10
1964-3rd	1722	1635	87
1964-4th	2700	2101	599
1965-1st	2412	1586	826
1965-2nd	2927	1621	1306
1965-3rd	3269	2056	1213
1965-4th	2824	2096	728
1966-1st	2838	1660	1178
1966-2nd	3201	1800	1401
1966-3rd	3359	2388	971
1966-4th	2728	2280	448
1967-1st	2708	1755	953
1967-2nd	3027	2015	1012
1967-3rd	3406	2087	1319
1967-4th	2685	2512	173
1968-1st	3081	2080	1001
1968-2nd	3891	2450	1441
1968-3rd	4076	2551	1525
1968-4th	3153	2917	236
		TOTAL	$16,502

[1]From Appendices B and C.
[2]From Appendix D.
[3]Gross backpay less net interim earnings.

EXHIBIT 25.

APPENDIX E-2

Baker's estimated backpay from January 1, 1969 through June 30, 1969.

QUARTER	Gross Backpay[1]	Net Interim Earnings[2]	Net Backpay[3]
1969-1st	$2,760	$2,275	$485
1969-2nd	3,262	2,905	357
			$842

[1]From Appendix C-2.
[2]From Appendix D.
[3]Gross backpay less net interim earnings.

EXHIBIT 5.

EXHIBIT 18R

3rd Quarter 1967	4th Quarter 1967	1st Quarter 1968	2nd Quarter 1968	3rd Quarter 1968	4th Qua 19

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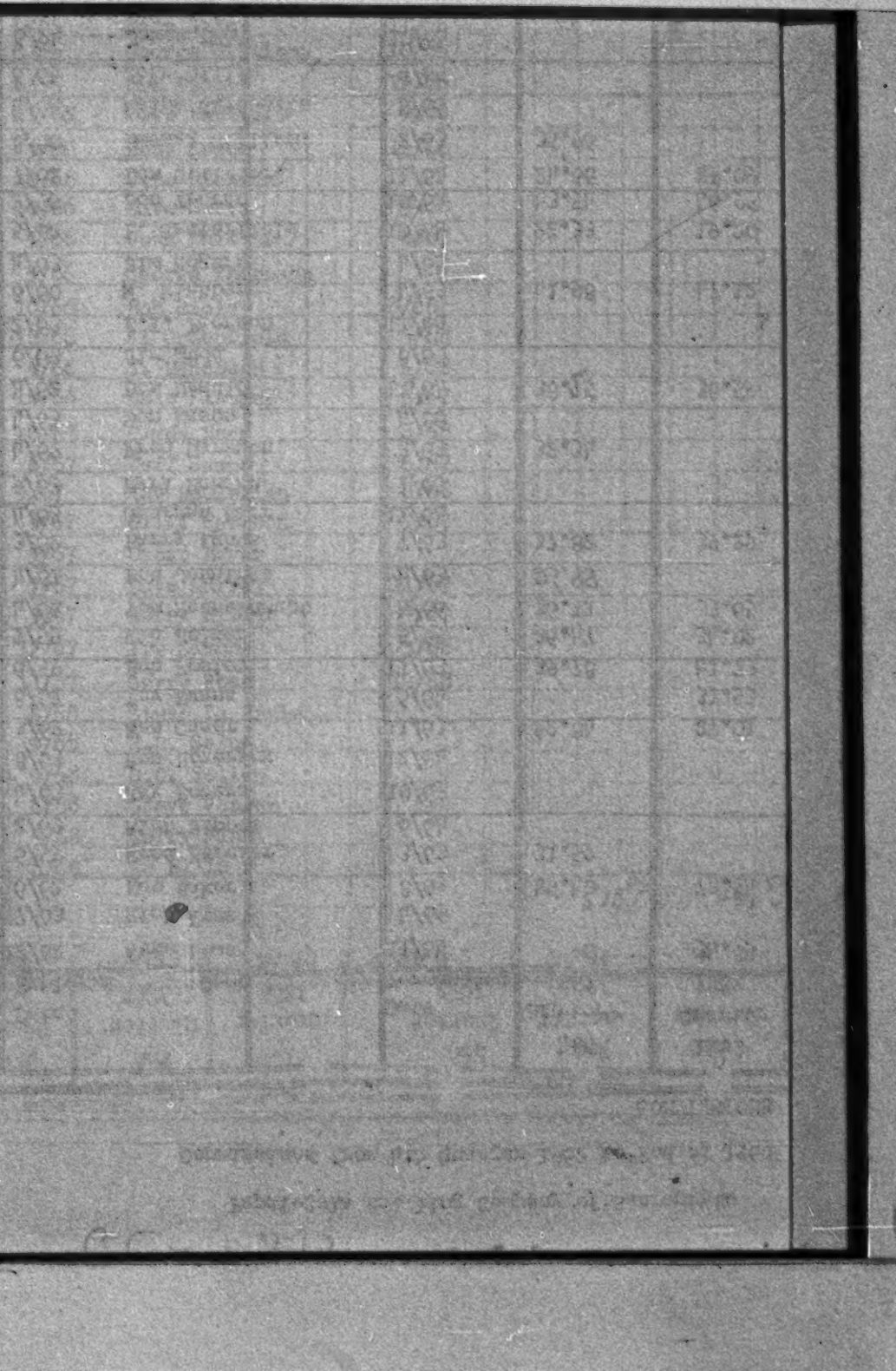

Before the National Labor Relations Board
Twentieth Region

In the Matter of: Golden State Bottling Company, Inc. d/b/a Pepsi-Cola Bottling Company of Sacramento and All American Beverages, Inc., d/b/a Pepsi-Cola Bottling Co. of Sacramento and Edward J. Farrell, An Individual and P.C.B.C.E., Inc., Party to the Contract. Case No. 20-CA-2656.

February 3, 1970
Federal Building
Courtroom No. 3 (Room 2407)
650 Capitol Mall
Sacramento, California

BEFORE:

ROBERT PIPER, Trial Examiner.

APPEARANCES:

DOUGLAS BARTON, Esq.,
450 Golden Gate Avenue,
San Francisco, California,
appearing as counsel for the
General Counsel, National
Labor Relations Board

JACKSON, [KUMLER]*
COPES & CROSKEY,

*The bracketed language followed by an asterisk represents corrections to the Transcript ordered by the Trial Examiner in Appendix A to his Supplemental Decision as set forth in the Petition for Certiorari, Appendix A.

by

MORTON B. JACKSON, Esq.

1901 Avenue of the Stars,
Los Angeles, California
90067, appearing on behalf
of Respondent. [1]

* * *

Q. (By Mr. Barton) During the calendar year 1965, Mr. Williams, were you employed as a distributor for Pepsi Cola Bottling Company of Sacramento?

MR. JACKSON: Objection, Mr. Trial Examiner.

Perhaps I can state an objection: First, we object to the line of testimony. We object to the characterization of it as an employment, as assuming something not in evidence.

But we object to the relevancy and pertinency of any testimony of distributors concerning distributorship earnings at this time. We have indicated that the present circumstances we have no objection to this man being put on out of order, but if it may be understood that there is a general objection running to his testimony, then, perhaps we can proceed.

But I do object to the characterization of the relationship of one of employment.

TRIAL EXAMINER: We might as well cross that bridge now. What is your position with respect to that, Mr. Barton? [34]

MR. BARTON: Our position will be that whether or not these individuals were independent contractors is really irrelevant insofar as the standpoint of remedy for Mr. Baker's discharge is concerned. We would certainly concede that if Mr. Baker has been an inde-

pendent contractor at the time of his discharge, there would have been [No]* violation but since there is no such contention, our position is that it is really [not]* relevant. We are talking about remedy here, not the scope of violation.

TRIAL EXAMINER: Well, do you intend to offer proof to the effect that if Mr. Baker had continued in his employment he would have become necessarily—necessarily have become a distributor?

MR. BARTON: Yes, we do. [35]

* * *

EDWIN JOHN CROFOOT

was called as a witness by and on behalf of the General Counsel and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Barton) Would you spell your name for the record, please, Mr. Crofoot.

A. Edwin John Crofoot, C-r-o-f-o-o-t.

Q. What is your present address? [43]

A. 3541 Whitney Avenue, Sacramento.

Q. And you hold a position with Golden State Bottling Company, do you not?

A. Yes.

Q. What is that position?

A. President.

Q. How long have you been president?

A. Since 1962.

Q. And you also own a portion of the stock of Golden State Bottling Company, do you not?

A. Yes, sir.

Q. Approximately what percent do you own?

A. A very small percentage, 15 shares out of 650.

Q. I see. What are your responsibilities at Golden State, Mr. [Crofoot]*?

A. I am President and General Manager.

Q. Are you its chief executive officer?

A. Yes, sir.

MR. BARTON: I will propose to examine him under Rule 43(b), your Honor.

TRIAL EXAMINER: All right.

Q. (By Mr. Barton) Now, at one time your corporation owned and operated a bottling company here in Sacramento, did it not?

A. Yes, sir. [44]

Q. And that was the Pepsi Cola Bottling Company; is that right?

A. Yes, sir.

Q. That was a franchise, is that correct?

A. Yes, sir.

Q. Were you actively involved in the management of that bottling company, Mr. [Crofoot]?

A. Yes, sir.

Q. Who is the person immediately below you in the chain of command?

A. May I, sir,—at one time you referred—

Q. Well, let's take it from the beginning of '63 to the time of the sale.

A. Mr. Cliff Field and my son E. J. Krofoot, II. [sic]

Q. All right. And were they actively involved in the management of the bottling company?

A. Yes, sir.

Q. Who was in charge of the day-to-day operations?

A. Mr. Gene Schilling.

Q. What was his title?

A. Manager.

Q. How often would you confer with Mr. Schilling regarding the operation of the bottling company?

A. Very regularly.

Q. How often a week or a month, if you could give me that? [45]

TRIAL EXAMINER: Daily?

THE WITNESS: Yes, almost daily.

Q. (By Mr. Barton) Did you have an office at the plant?

A. I did, sir, until September of 1966, at which time we had a fire and my office burned.

Q. And would you come to your office every day?

A. Not every day, but very regularly.

Q. How often a week?

A. Well, four or five times. Three to five times.

Q. And to what extent did Mr. Schilling have authority to undertake transactions and carry on business without authorization from you?

A. Well, in a day-to-day run of the business he had full authority.

Q. I see. Did he have the authority to bind the corporation, assume debts, this kind of thing?

A. No, sir.

Q. He did not.

Did he have the authority to initiate legal proceedings?

A. No, sir.

Q. If legal proceedings were initiated against the bottling plant, or it was necessary to pursue litigation in the course of operation of this bottling plant, did he have the authority to undertake such proceedings? Initiate them himself? [46]

A. No, sir.

Q. He would have to consult with you on such occasion?

A. Yes, sir.

Q. And if proceedings were filed against the bottling company, that is the same?

A. Yes, sir.

Q. He would have to consult with you.

And once such proceedings had been filed and it became a question of whether or not you were going to settle rather than going to court, he would have to consult with you on that decision; is that correct?

A. Yes, sir.

Q. Now, one such occasion on which Mr. Schilling consulted you concerned the line or the difficulties you were having in 1963, did it not?

A. I don't specifically recall that he did.

Q. I see. Did he not on the occasion when the men left the plant and refused to sign the contract and he denied them entrance to the plant, were you present on that occasion?

A. Not that I recall, sir.

Q. But you were consulted about the problems arising from that difficulty?

A. I knew of them at that time. It's so long ago, I don't recall a specific instance. [47]

Q. And when the bottling plant corporation became involved in legal proceedings arising from these labor difficulties, did he consult with you regarding the progress of those proceedings?

A. I don't recall any specific instance, no, sir.

Q. I see. Did you participate in decisions regarding obtaining counsel in pursuit of those proceedings?

A. Not directly, no, sir.

Q. Mr. Schilling did?

A. No, sir, the Bottling Association did.

Q. I see.

Following the conclusion of that—

Oh, incidentally, when expenditures come in pursuant to these, such as these legal proceedings, does Mr. Schilling have the authority to make payment or does he consult with you?

A. He had authority with someone else signing the check.

Q. Who would sign the check?

A. Either myself or my son or C. E. Eales. [48]

* * *

Witness—Crofoot

Q. (By Mr. Barton) I understood from your previous testimony that Mr. Schilling had no authority to initiate legal proceedings or to settle them or to make decisions as to the course of these proceedings, is that correct?

A. Sir, no, not completely. Mr. Schilling represented us [49] at the Bottlers Association and the proceedings that would be taken there he would have authority to proceed with them.

Q. I see. So he wouldn't need to consult with you in that aspect of the job at all?

A. Not in connection with that, no, sir.

Q. During the course of the same period you had labor negotiations, is that correct, with the P.C.B.C., Inc., the Union that was representing the employers at the time?

A. No, sir.

Q. He didn't consult with you at any time regarding them?

A. I believe he did, but I am not completely familiar with the details.

Q. So Mr. Schilling consulted with you, but by in large he assumed these responsibilities himself?

A. That is correct, sir.

Q. Had you specifically delegated all authority to him in labor relations matters?

A. No.

Q. What had you told him in that respect?

A. I don't think there was any specific instructions in connection with it. He was designated as I recollect as our representative on the Board of Directors of the Bottlers Association.

TRIAL EXAMINER: Do I understand the Bottlers Association handled the collective bargaining? [50]

THE WITNESS: Yes, sir.

TRIAL EXAMINER: On behalf of more than your company, then, I take it?

THE WITNESS: Yes, sir.

Q. (By Mr. Barton) Did not Mr. Schilling engage in independent negotiations with this particular union?

A. I can't answer that, sir. I don't know. At least I did not. I do not remember.

Q. I see. Now, in regard to the unfair labor practice proceedings which developed from that, these labor difficulties, were you advised of the initial hearing in that case which took place in August of '63?

A. Not verbally.

Q. Were you informed that the company lost that?

A. No, sir.

Q. Were you informed of a decision to pursue the matter in the courts?

A. No, sir.

Q. Mr. Schilling never mentioned that?

A. Not that I specifically recall. It is very possible he did. It's a long time ago and I haven't that good a memory.

Q. And you had no knowledge of the legal expenses which the company was incurring pursuant to these legal proceedings, is that correct? [51]

A. Yes, sir, I did.

MR. JACKSON: Now just a moment. I object to that as assuming something not in evidence. There is no evidence the company assumed any legal expenses.

MR. BARTON: I will withdraw the question.

Q. (By Mr. Barton) Were you aware of any legal expenses being incurred by the company in these legal proceedings?

A. I knew we contributed to the Bottlers' Association for attorney's fees, yes, sir.

Q. Did you sign checks for that?

A. I may very well have.

Q. I see. Now, directing your attention to the month of December 1965, did you receive knowledge of the Ninth Circuit Decree in the case involving your company?

A. Not that I recall at this time.

Q. Did you ever receive information that the company had lost that proceeding?

A. Not that I recall. I may have.

Q. To your recollection when did you first—I assume you know now in part, at least, the matter involving Ken Baker, you are involved with this now.

And I take it you are informed now that the Ninth Circuit Decree was adverse to the company insofar as it related to the discharge of Ken Baker?

A. I understand that is true now, yes, sir. [52]

Q. And to your knowledge, when did you first learn of this?

A. That it was a court proceeding? This morning.

Q. You didn't know about it until this morning?

A. Not that I recall. I knew there was some difficulty, but I did not know it had been in the courts.
Q. Tell me this, Mr. [Crofoot]*: When you are writing your checks, payments of expenditure, when you were doing this during the period in which you were operating this bottling plant, did you ever raise any questions as to what the expenditure was for, or would you just sign them as a matter of course?
A. No, I raise questions on occasions.
Q. If expenses came in which seemed to be overly large, unduly large, you would ask a question about it; is that right?
A. Yes, sir.
Q. I take it from your answer regarding the lack of knowledge concerning the court decree, you also until this morning were unaware of the final court decree in the month of December 1968 relating to this case; is that correct?
A. Yes, sir.
Q. You had no knowledge? You didn't know the company lost that proceeding?
A. I knew they had a—lost a proceeding; I did not know [53] it was a court proceeding.
Q. You knew they lost a court proceeding; you knew it related to Ken Baker?
A. Yes, sir, I did.
Q. You knew that as of '68?

TRIAL EXAMINER: What was that earlier court decree you were referring to or court order?

MR. BARTON: Initially there was a decree in December of '65, your Honor, and there was various motions to reconsider and motions to reconsider the reconsideration which consumed about three years until the final decree was settled in '68.

TRIAL EXAMINER: Did you gentlemen both participate in the original proceedings?

MR. BARTON: I did not.

MR. JACKSON: I did.

Q. (By Mr. Barton) Mr. Krofoot, during this intervening three years—

MR. JACKSON: May I qualify that? I did not participate in the original hearing before the trial examiner; I did participate, stepped in at one point during the Appellant proceedings, and as a matter of fact I think I conducted the oral argument and handled the matter from that point forward.

Q. (By Mr. Barton) Mr. [Crofoot]*, during this period from August of '64 until December of '68, do you recall in [54] signing checks being made aware or discovering that there were some rather substantial legal expenditures being made by Golden State?

MR. JACKSON: Just a moment. Again I must object. This is not the witness' testimony. The witness testified that certain contributions were made to the Bottling Association in respect to attorneys' fees, but I don't think the witness has testified that the company paid substantial funds.

MR. BARTON: I merely asked him if he recalled.

TRIAL EXAMINER: I am a little confused by these references to the Bottling Association. The Respondent in the prior case was Golden State.

MR. JACKSON: That is my point.

TRIAL EXAMINER: That is who this gentleman is the President of?

MR. JACKSON: That is correct, your Honor.

TRIAL EXAMINER: What did the Bottling Association have to do with the unfair labor proceedings?

MR. JACKSON: This is the point, if I may explain, and I will be testifying to these effect myself.

TRIAL EXAMINER: No, this is a legal matter.

MR. JACKSON: But to explain, to just make it perfectly clear, the Sacramento Bottlers Association is an association of the soft drink bottlers in Sacramento, and my office is retained by the association, and it's by virtue of their [55] membership in the association that our services are made available to, or have been made available to the bottlers in connection with these unfair labor practice proceedings.

So the point being—

TRIAL EXAMINER: If an individual company is involved in an unfair labor practice proceeding, do they not pay the legal fees?

MR. JACKSON: No, they do not. Our bills are submitted to the Association.

TRIAL EXAMINER: And they are not resubmitted to the Respondents?

MR. JACKSON: No, they are not.

TRIAL EXAMINER: They only pay their shares by means of whatever they attribute to the Association?

MR. JACKSON: That is right. They are assessed, really, on a formula basis. It has nothing to do with the amount of the fees whatsoever.

TRIAL EXAMINER: I still think the question is proper, but I see now why you are asking it.

Do you remember the question?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Answer it.

THE WITNESS: I was aware of the fact I signed substantial checks to the Bottlers Association for legal fees.

MR. BARTON: Thank you. [56]

THE WITNESS: But may I add, none of the attorneys directly.

Q. (By Mr. Barton) And you were aware of the fact, were you, that these legal fees related to this unfair labor proceedings?

A. Not specifically.

Q. Did you ask anyone what they related to?

A. Not that I recall. I think those fees related to other problems too, other than just the labor relations practice.

Q. Uh-huh.

Now, Mr. [Crofoot]*, as Chief Executive Officer of Golden State, it would be a matter of some concern to you, would it not, if Golden State were involved in litigation involving several thousand dollars?

A. Not particularly.

Q. I see. Is that a fairly common undertaking for your bottling company?

A. To be engaged in litigation, you mean?

TRIAL EXAMINER: Involving several thousand dollars.

THE WITNESS: Yes.

Q. (By Mr. Barton) How about in litigation involving $20,000?

A. That would not be unusual.

Q. When you are involved in such litigation, Mr. [Crofoot]*, during the period you ran the bottling company, your corporation owned the bottling company, Mr. Schilling had [57] the authority to make decisions regarding such litigation or would you make them?

A. I would make them.

Q. You would make them. All right.

MR. BARTON: I am marking for identification as General Counsel's Exhibit 15, a document which pur-

ports to be an agreement between Golden State Bottling Company and Sam Snead All American Golf, Inc.

Q. (By Mr. Barton) Mr. [Crofoot]*, I show you General Counsel's Exhibit 15 for identification and ask if you have ever seen that document before.

A. Yes, sir. This is not a confirmed copy.

Without examining it all the way through, this is not a signed copy.

Q. I am aware of that. Would you look it over?

A. I can't see it, sir.

Q. Do you have your glasses with you?

A. No, sir, I do not.

We have another copy, I am sure, here. And I don't want to identify something that is multi-page, it isn't signed, without knowing it is the same.

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: Back on the record.

MR. BARTON: After conferring with Mr. Jackson, I [58] withdraw my Exhibit 15 and I am marking for identification GC 15, a document which also purports to be an agreement between Golden State Bottling Company and Sam Snead, All American Golf, Inc., and also bears the signature of E. J. Crofoot for Golden State, Harry Sarles, S-a-r-l-e-s, and I believe it's "Harvey" if I am not mistaken.

TRIAL EXAMINER: I can't read it myself.

MR. BARTON: Harvey. And Gene G. Schilling, S-c-h-i-l-l-i-n-g, and C. P. Williamson.

Q. (By Mr. Barton) Would you verify that this is the purchase agreement?

A. Yes, sir.

Q. Did you sign the legal copy of that document, Mr. Crofoot?

A. Yes, sir.

Q. And I presume that was concluded after a period of negotiations; is that correct?

A. Yes, sir.

Q. Did you participate in these negotiations?

A. I handled them all.

Q. Who else participated?

A. No one except Mr. Sarles and myself and Mr. Williamson, an attorney from the East.

Q. Were you represented by counsel?

A. Yes, sir. Mr. A. I. Diepenbrock. [59]

Q. How do you spell that?

A. D-i-e-p-e-n-b-r-o-c-k.

Q. What were the initials again?

A. A. I.

Q. When did these negotiations begin, to your recollection?

A. In approximately the latter part of December 1968.

Wait a minute. 1967.

Q. '67. And the agreement besides being signed on January 31, 1968, is that in factor correct?

How many drafts preceded this final document to your recollection?

A. I believe only one.

Q. Where did the negotiations take place, Mr. Crofoot?

A. In Dr. Diepenbrock's office in Sacramento.

Q. In Sacramento.

During the conversations in these negotiations, did you at any time consult with Mr. Schilling?

A. No, sir, I did not consult with him. He sat in, I believe . . . oh, during one negotiation that was held in the plant.

Q. And how soon prior to the conclusion of the agreement was that meeting where Mr. Schilling participated?

A. I can't answer. It was between the oral—when we started in December and the conclusion in January.

Q. Now, it's true that pursuant to this agreement, the [60] corporation which became known as All American was interested in purchasing the bottling plant as a going concern; is that correct?

A. Sir. I know nothing about All American.

Q. Well, that was a portion of your negotiations, was it not?

A. No, sir.

Q. You didn't discuss the operations of the plant at all?

A. Well, not with All American, no, sir.

Q. Well, with the people of Sam Snead?

A. I did with Sam Snead, All American Golf, yes, sir.

Q. Do you remember what you discussed regarding the operations of the plant?

A. Everything that we could think of.

Q. Everything? They wanted to know what kind of business they were getting, right?

A. Yes, sir.

Q. You talked to Mr. Schilling about what kind of business they were getting?

A. Did I?

Q. Did they, to your knowledge?

A. Not that I recall. Except if there was some matter that I was unable to give them information on the day-to-day operation, I would ask Mr. Schilling.

Q. Do you recall what matters you were unable to give them [61] information on about the day-to-day operations?

A. Not specifically, no, sir.

Q. They were probably concerned about labor relations problems you were having, were they not?

A. They were never mentioned.

Q. Never mentioned?

Did they indicate any interest in your satisfaction with the managerial personnel in the plant?

A. Yes, sir, they did.

Q. Did they go into that in great detail?

A. I wouldn't say in great detail. They asked for my opinion in connection with it, and I expressed it.

Q. Did they ask to meet with the individuals who were in charge of operating your plant to find out for themselves what kind of people were involved in this operation?

A. I believe they had an individual here from Ohio, if I recall, that was an operations man back there that did talk to Mr. Schilling and Mr. Sarles.

Q. And what was this man's name?

A. I can't answer that, sir.

Q. And you talked to Mr. Schilling yourself regarding the possibility of this transfer, is that correct, during the course of these negotiations?

A. Well, I told him I was doing it.

Q. Did you ask him if he would be willing to work for [62] Sam Snead?

A. Not that I recall, no, sir. [63]

* * *

(Witness—Crofoot)

Q. (By Mr. Barton) After this purchase, Mr. Crofoot, after your sale of the bottling company, were all

your ties with Mr. Schilling severed at this point in time?

A. No, sir.

Q. What ties remained, if any?

A. Well, personal ties, you mean?

We lived a few doors from each other.

Q. He was authorized to represent Golden State?

A. He was not authorized to represent Golden State.

Q. After the purchase, not at all?

A. No, sir, none whatsoever. [68]

Q. No authority to bind you in any way?

A. No, sir.

Q. Or make representations on his behalf?

A. No, sir.

Q. Or on behalf of Golden State.

All right. Now, Mr. Crofoot, before the successful negotiations with Sam Snead, you tried and on prior occasions to sell the bottling company, had you not?

A. Yes, sir.

Q. Dating back a number of years; right?

A. Yes, sir.

Q. And these had all been unsuccessful?

A. Yes, sir.

TRIAL EXAMINER: Obviously he hadn't sold it.

Q. (By Mr. Barton) In fact, once a negotiation concerned—was with Mr. Schilling himself, right?

A. No, sir.

Q. Never? You never negotiated with Mr. Schilling?

A. No, sir.

Q. Is it not true that during the course of the labor relations difficulties which gave rise to these proceedings in '63 that you were negotiating with Mr. Schilling for the sale of the plant to him?

A. I think Mr. Schilling at one time mentioned to me that he would like to try to put a group together to buy it, but we never got to the point of any negotiations. [69]

Q. Did you ever had any discussions at all with him about the possibility of selling to him?

A. Just that much, I believe, was all.

Q. The fact these discussions were disrupted by the labor relations difficulties which gave rise to these proceedings, right?

A. That is not true, sir.

Q. That is not true?

Now, have you discussed with anyone from All American Beverage Company the existence of these proceedings here? This backpay matter?

A. Yes, sir.

Q. When did you first discuss that?

A. Two or three weeks ago.

Q. Who did you discuss this with?

A. With Mr. Jackson and Mr. Schilling.

Q. And what was the subject of these discussions? What was said on that occasion?

A. I don't recall specifically, other than the fact I was informed there was to be additional hearings in connection with it.

Q. You contacted him first or did they contact you first?

A. I believe Mr. Jackson contacted me first.

Q. And it is true, is it not, that as a result of these discussions you agreed to indemnify All American for whatever [70] losses it incurred as a result of these proceedings?

MR. JACKSON: Objected to as irrelevant to these proceedings, your Honor.

MR. BURTON: I think it's quite relevant and from a former case the Board indicated it was quite interested in ramifications between the predecessor —

TRIAL EXAMINER: Are you talking about currently or at the time of the contract?

MR. JACKSON: Well, I believe the question refers to a current arrangement.

TRIAL EXAMINER: Well, I am asking counsel.

MR. BARTON: I think that question is at least open, your Honor, as to what the pertinence is.

TRIAL EXAMINER: Well, you prefaced it by asking him about Mr. Jackson and a representative of All American.

MR. BARTON: Yes, sir.

TRIAL EXAMINER: Does your question refer to some current understanding or prior understanding?

MR. BARTON: It refers to whatever understanding there was.

TRIAL EXAMINER: Current or past?

MR. JACKSON: If the Trial Examiner please, the agreement which has just been placed in evidence contains a warranty in its respect and it also contains an assumption of liability and specified liability. [71]

TRIAL EXAMINER: Well, I haven't had the advantage of seeing it.

MR. JACKSON: My point is, this is something that is already in evidence and is a matter of record.

TRIAL EXAMINER: And it's not in there, at least in your opinion?

MR. JACKSON: Precisely. Well, there is no assumption of this liability by the buyer.

There is an assumption of certain specified liability only, and there is a warranty that there is no litigation pending. So in other words, an assumption of this liability —

TRIAL EXAMINER: There is a warranty that there is no litigation pending?

Wasn't this pending?

MR. JACKSON: It was.

TRIAL EXAMINER: In other words, it's an incorrect warranty?

MR. JACKSON: The fact is at the time it completely slipped the minds of the parties.

TRIAL EXAMINER: Well, I am going to overrule the objection because I am interested. I don't know what the case is that counsel is referring to, but I can see the potential relevancy in any event.

MR. BARTON: Will you answer the question, Mr. Crofoot?

TRIAL EXAMINER: Do you remember the question? [72]

THE WITNESS: In this agreement, we did warrant any undisclosed liability.

TRIAL EXAMINER: That wasn't the question.

MR. BARTON: I will just restate it. Then it will save time.

Q. (By Mr. Burton) During the course of your recent discussions with representatives of All American, did you or did you not agree to indemnify All American for whatever losses it might sustain as a result of these proceedings?

A. I discussed it with Mr. Schilling and told him that I thought the contract covered our liability for any losses that might be sustained, but that if it didn't I would be happy to so guarantee.

TRIAL EXAMINER: This is recent?

THE WITNESS: Yes, sir; well, it's both—it's in the contract and it's —

TRIAL EXAMINER: Yes. But I mean this discussion was recent?

Q. (By Mr. Barton) And this is the first time you brought this matter up; is that right?

A. Yes, sir.

Q. And what was the scope of this indemnification, Mr. Crofoot? Did you agree to compensate the offices and agents of All American for whatever time they lost pursuant to this litigation? [73]

A. No, sir.

Q. Did you offer to assume whatever attorneys' fees they incurred?

A. Yes, sir.

Q. And you agreed to pay whatever was found running against them; is that right?

A. Yes, sir. [74]

* * *

CROSS-EXAMINATION

Q. (By Mr. Jackson) Mr. Crofoot, at the time of the sale, that is to say in January of 1968, was Golden State engaged in any other business?

A. Yes, sir.

Q. Aside from its Pepsi Cola Bottling operation?

A. Yes, sir.

Q. What other business or businesses?

A. They had the Crow's Nest Restaurant and Belford Arms Apartments, the South Gate Plaza Land Development, a thing called International Interpreter . . . did I mention Auto Bath, Auto Bath, Incorporated?

Q. I am sorry, I didn't get that last. Auto Bath? A-u-t-o

A. I believe so.

I believe that was all right at that time.

TRIAL EXAMINER: Is it still business?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: And has assets and so forth?

THE WITNESS: Yes, sir. [76]

Q. (By Mr. Jackson) Is it still the owner and the operator of all these enterprises?

A. All but the Crow's Nest, and that was recently sold.

Q. Has it acquired any new operations or enterprises since that time?

A. No, sir. We have been looking for some, but we haven't acquired any.

Q. Who were the other shareholders in Golden State, or who were the other shareholders, let me say, at the time of the purchase?

A. At the time it was sold to Sam Snead All American?

Q. At the time the Pepsi Cola operation was sold to Sam Snead.

A. My son and myself.

Q. I believe you stated at that time—well, at that time was it then that you owned approximately 15 shares?

A. Yes.

Q. And he owned all the balance that was outstanding?

A. Yes, sir.

Q. And is that still the situation?

A. Yes, sir.

Q. Did Mr. Schilling—either Mr. Gene Schilling or Mr. William Schilling ever own any shares in Golden State?

A. No, sir.

Q. Is your son an officer of the corporation? [77]

A. Yes, sir.

Q. What is his title?

A. Vice President and Assistant Sceretary, and the Treasurer.

Q. Was that also his title at the time of the sale Sam Snead All American?

A. Yes, sir.

Q. Now, how did the negotiations with Sam Snead come about? Can you explain the circumstances in your own words?

A. Yes, sir. I had been discussing the sale of the Pepsi Cola operation to United Artist Theatres, Incorporated, and apparently Pepsi Cola Corporation objected to transferring the title to them and said they would produce a buyer and they produced Sam Snead All American Golf and introduced me to Mr. Sarles.

Q. Prior to the time they produced Sam Snead had you known of the company or known any of its principals?

A. No, sir.

Q. Had you ever owned any stock in it?

A. No, sir.

Q. Had any member of your family or any shareholder, officer or director to your knowledge held any interest whatsoever in Sam Snead?

A. No, sir.

Q. Prior to this time when you were introduced to them and prior to the sale, so far as you were aware, did any officer [78] or director or shareholder of Sam Snead or any enterprise connected with it own any interest in or have any position with Golden State?

A. No, sir.

Q. Is it a fair statement to say that prior to the time the parent company produced them as a prospective buyer, they were complete strangers to you?

A. Absolutely.

Q. Do you presently own any stock in All American?

A. No, sir.

Q. Does any member of your family have any stock in All American?

A. No, sir.

Q. When you refer to All American, I am referring to Sam Snead.

A. I understand. Yes, sir.

Q. Are you an officer or director of All American?

A. No, sir.

Q. Or is any member of your family an officer or director of All American?

A. No, sir.

Q. I believe you stated, Mr. Crofoot, that you personally conducted all of the negotiations conducted with the sale of Pepsi Cola to All American.

A. As far as representing the company is concerned, and, of [79] course, with the guidance of Mr. Diepenbrock.

Q. Yes.

But were you present at all of the negotiations sessions?

A. Yes, sir.

Q. Was the question of this litigation or the proceedings that led up to it mentioned at any time during the course of those negotiations?

A. No, sir.

Q. Was the question of pending litigation against Pepsi Cola or pending litigation in which Pepsi Cola might be involved ever raised or discussed in the course of any of these negotiations?

A. Yes, sir.

Q. And what was said in that connection?

A. I said that there was no pending litigation.

TRIAL EXAMINER: By Pepsi Cola you are referring to Golden State?

MR. JACKSON: Yes, I am referring—
I don't know that.

THE WITNESS: The same would be true.

MR. JACKSON: Your Honor, whether the Crow's Nest or the apartment building or some of those may be involved in litigation, I am speaking solely of litigation involving the bottling corporation.

TRIAL EXAMINER: You just said Pepsi Cola, and I wasn't [80] exactly sure the record was clear.

MR. JACKSON: Surely. I understand. I mean that Golden State-Pepsi Cola operation.

THE WITNESS: That is correct, sir.

Q. (By Mr. Jackson) On your direct examination, Mr. Crofoot, you were asked as I recall whether you severed all ties with Mr. Schilling following the sale to Sam Snead. I am referring to Mr. Gene Schilling.

And as I recall you said, "no." I would like to ask if you meant in that context, or I would like to rephrase that question and ask you if you severed all business ties with him.

A. No, sir.

Q. Did you still have some business connection or ties with Mr. Schilling?

A. In that he consults me occasionally, yes, sir.

Q. But do you have any formal business relationship with him?

A. No, sir.

Q. He has no further relationship with Golden State Bottling?

A. No, sir, none whatsoever.

Q. Was his relationship with Golden State terminated at the time of sale?

A. Yes, sir.

MR. JACKSON: I think that's all. Thank you, Mr. Crofoot. [81]

MR. BARTON: Just a couple of points, Mr. Crofoot.

REDIRECT EXAMINATION

Q. (By Mr. Barton) You indicated to Mr. Jackson that the subject pending litigation was in fact discussed during litigation?

A. I didn't quite hear you, sir.

Q. Well, just a couple of moments ago you said the subject of pending litigation involving the bottling company was discussed during litigation.

A. Yes sir. I was asked if there was any pending litigation, and I said, "no," that there was none.

Q. And I gather from that testimony that representatives of Sam Snead asked you if there was pending litigation and you told them no, right?

A. That is correct, sir.

Q. Now, before you gave them an answer, did you stop to consult with anyone?

A. No, sir.

Q. At the bottling plant?

A. No, sir.

Q. Is that right?

A. I beg your pardon.

Q. You just gave them a snap answer right at that time?

A. Yes, sir, I did.

Q. And I take it from that, then, that you actually were [82] confident in your own mind there was no pending litigation?

A. I hadn't remembered any, no, sir. And my attorney knew of none.

Q. Did your attorney represent you? Represent the bottling company in all litigations?

A. For approximately 25 years, yes, sir.

Q. He didn't represent the bottling company in labor relations matters, did he?

A. No, sir.

Q. It was also mentioned that after the sale of the bottling company you continued to have business ties with Mr. Gene Schilling.

A. I don't think that I said that. I said that he consulted me occasionally, and if you want to interpret that as business ties, . . .

Q. Well, I misunderstood your interpretation as to what you meant by that.

What consultation did you have with Mr. Schilling?

A. Well, I think occasionally he asked me about the price of different types of containers.

Q. Questions concerning the operation of the bottling plant; is that right?

A. Yes, sir.

Q. And I take it during the course of these discussions there was no mention made to you regarding this backpay matter concerning Ken Baker? [83]

TRIAL EXAMINER: He can't hear you, sir.

Q. (By Mr. Barton) Ken Baker, the man sitting right here?

A. No, sir.

MR. BARTON: I have no further questions.

RECROSS-EXAMINATION

Q. (By Mr. Jackson) Mr. Crofoot, have either myself or my firm ever represented Golden State in any proceedings other than this one here?

A. No, sir.

Q. Who is your regular attorney?

A. I. E. Diepenbrock.

Q. Has Golden State Bottling Company ever been billed for legal services by myself or my firm?

A. No, sir.

MR. JACKSON: No further questions.

TRIAL EXAMINER: Is Golden State Bottling Company, is that still the name of your company?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Does it have any bottling business now?

THE WITNESS: No, sir.

TRIAL EXAMINER: It has none? No business like the Pepsi-Cola Bottling Company business that it had?

THE WITNESS: No, nothing even approaching it. No, sir.

TRIAL EXAMINER: That is all.

MR. JACKSON: May I should clear that up for the record. [84]

Q. (By Mr. Jackson) As of the time of the purchase and sale, did Golden State Bottling Company cease all business in the bottling business?

A. In every way.

Q. And has it had any activity in that area in any way since that time?

A. No, sir.

* * *

EUGENE SCHILLING

was called as a witness by and on behalf of the General Counsel and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Barton) Will you spell your name for the record, Mr. Schilling? [85]

A. Eugene Gardner Schilling, S-c-h-i-l-l-i-n-g.

Q. What is your current address?
A. 6383 West Parkway, Sacramento.
Q. Where are you presently employed?
A. Pepsi Cola Bottling Company of Sacramento, 11 "Q" Street.
Q. Your position is President and General Manager of the Division operating that division; is that correct? And in that position are you the chief executive of—at that location?
A. On a day-to-day operation, yes, sir.
MR. BARTON: I will interrogate Mr. Schilling under Rule 43(b).
TRIAL EXAMINER: All right.
Q. (By Mr. Barton) Who, if anyone, in the All American hierarchy do you consult regarding business conditions at the bottling plant?
A. Mr. Robert E. Haley. H-a-l-e-y.
Q. What is his position, do you know?
A. He is President and Chief Executive Officer of All American Beverages.
Q. And where is he located?
A. Springville, Ohio, at the Pepsi Cola Bottling Company.
Q. How often do you get in touch with Mr. Haley?
A. As often as necessary. [86]
Q. About how often does that average?
A. Possibly once a month to one every six weeks.
Q. And what is your principal means of communication?
A. By telephone or correspondence.
Q. Does he ever come out to the plant?
A. Oh, occasionally.
Q. How many times has he come out to the plant since the purchase?
A. I would say four or five times.

Q. Have you ever gone back to Ohio to consult with him?

A. I went back once, yes, sir.

Q. Is there anyone else in the All American hierarchy that you consult with?

A. No, sir.

Q. What is the range of your responsibility? You are in charge of the day-to-day operation? What kind of decisions are you required to consult with Mr. Haley about?

A. We are contemplating the construction of a new bottling plant. I have discussed with him the purchase of the property for the plant, the plans for the plant, the equipment to be purchased.

Q. Would it be correct to state, then, that any expenditure that is out of the ordinary course of business is the kind of thing you consult with him about?

A. Yes, sir. [87]

Q. Do you send any monthly reports of expenditures?

A. Yes, sir. We send a monthly profit and loss statement.

Q. Does this profit and loss statement detail the expenditures and* receipts received by the bottling plant?

A. Yes, sir.

Q. How about legal proceedings? Do you consult with him regarding those?

A. No, sir.

Q. Do you have authority to handle those on your own; is that correct?

A. We haven't had any as of yet.

Q. I see. Have you been given any guidelines as to what circumstances you should seek authorization to [proceed]* or settle, or whatever, when such a proceeding arises?

A. Well, if the occasion arose, I would contact Mr. Haley.

Q. Now, I gather as [President]* and General Manager of this operating division, Mr. Schilling, part of your obligation is to become familiar with the instruments to transfer, which occasions the transfer of assets; is that correct?

A. No, sir, that is not correct.

Q. You haven't been concerned with what liabilities All American assumed and what it did not assume?

A. I was not in on the negotiations of the contract in detail.

Q. Well, as General Manager is it your responsibility to authorize payments of expenditures as they come into the [88] bottling plant?

A. Yes, sir.

Q. Did you write the checks, sign the checks?

A. With other signatures, yes, sir.

Q. What other signatures?

A. Our controller, Mr. Love, William Schilling, George Steers.

Q. And these people are all located at the bottling plant; is that right?

A. Yes.

Q. And in signing these checks and in reviewing these expenditures, it is part of your obligation, is it not, to verify that the obligation that the bill being paid is one which you owe; is that right?

A. Yes, sir.

Q. Which the bottling company owes or All American owes?

A. Yes, sir.

Q. And if you saw a bill and it wasn't All American's responsibility or the bottling plant's responsibility,

you wouldn't pay the check, right? You wouldn't pay the bill?

A. Not if it wasn't a responsibility of All American Beverages.

Q. You were aware under the transfer of assets that All American had assumed some liability and not others; right?

A. We assumed that contracts were due on vending equipment. [89]

Q. You were aware that there were certain liabilities that All American had not assumed, were you not?

A. I don't know what you have reference to.

Q. Well, let's take an example. I note that the purchase agreement indicates that one item which is not being transferred to All American is the [boat]* entitled "Miss Pepsi." Were you aware of the existence of such a [boat]*?

A. I knew there was such a [boat]*, yes, sir.

Q. Prior to the transfer of assets, when you were a general manager for Golden State, did expenses come in regarding the maintenance of Miss Pepsi?

A. Not to my knowledge.

Q. If maintenance repairs came in now, you wouldn't pay them, would you?

A. No, sir.

Q. Are there any other obligations, say, an obligation of Golden State regarding the obligation of Belford Plaza? If that were sent to Golden State or the bottling plant under the assumption that was still run by Golden State, you wouldn't pay that?

A. If it was an obligation of Golden State?

Q. Yes.

A. No, sir.

Q. Likewise with all of the other operations of Golden State mentioned by Mr. Crofoot earlier? South Gate Development, [90] International and Auto Bath? If any bill comes in relating to the operations of those enterprises, you wouldn't pay, would you?

A. No, sir.

Q. You would feel that that would be actually a negligent undertaking of your duties, would you not?

A. Yes, sir.

Q. I gather from your testimony then, Mr. Schilling, that within the scope of your responsibilities after the purchase by All American your responsibilities have increased somewhat over what they were before; is that correct?

A. Yes, sir.

Q. I asked you before if you had no responsibility in handling legal proceedings, and now you do; is that right?

A. Correct.

Q. How often did you check with Mr. Crofoot when you were with Golden State over the operation?

A. Four to five times a week.

Q. It is true, is it not, that you called Mr. Crofoot in and found yourself in labor difficulties in 1963, is it not?

A. I don't recall talking to Mr. Crofoot about it.

Q. Do you recall the day in which the men walked out and wouldn't work?

A. Yes, sir.

Q. Do you know whether or not Mr. Crofoot was present on that [91] occasion?

A. No, sir, he was not present.

Q. When the unfair labor charges were charged against Golden State as a result of his labor relations problems, did you discuss this with Mr. Crofoot?

A. I may have, I can't recall it.

Q. A formal complaint was issued by the Regional Office of the National Labor Relations Board; it was served on the bottling company at that location. Did you advise Mr. Crofoot of that fact?

A. No, sir.

Q. It became necessary to go to formal hearing in August of 1963. Did you advise Mr. Crofoot of that?

A. Not to my knowledge.

Q. And ultimately when the Trial Examiner issued his decision —

TRIAL EXAMINER: Before you get that far, were you present at the hearing before the Trial Examiner?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: All right. Go ahead.

Q. (By Mr. Barton) After the Trial Examiner issued his decision adverse to Golden State, did you advise Mr. Crofoot of that?

A. No, sir.

Q. Did you advise him of any other of the other procedures [92] which ensued subsequent to the issuance of that Trial Examiner's decision relating to that case?

A. I am sorry. Would you be more specific?

Q. Well, ultimately I guess someone at Golden State decided to test the Board's order in the Ninth Circuit Court of Appeals.

Your were aware of that decision, were you not?

A. Yes, sir.

Q. Did you make that decision?

A. Yes, sir.

Q. Making that decision, did you consult with Mr. Crofoot?

A. I don't believe so.

Q. There were a series of rehearings and motions for consideration, were you consulted whether or not the company wanted to pursue those beyond that point?

A. No, sir.

Q. You were not consulted?

Who made the decision to begin with those proceedings?

A. I believe I did, sir.

Q. You say you weren't consulted. You mean you made decision on your own; is that right?

A. Yes, sir.

Q. And you advised your attorney of it, right?

A. Pardon me?

Q. You advised your attorney of that decision, right?

[93]

A. Mr. Jackson.

Q. Is that right?

A. Yes, sir.

Q. Incidentally, you were present when Mr. Crofoot testified, is that correct?

A. Yes, sir.

Q. And you heard him testify you had no authority to represent Golden State subsequent to the transfer of the bottling company to All American, did you not?

A. Would you say that again, please?

Q Did you hear him testify that you had no authority after the transfer of assets to represent Golden State?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

You refer to after the plant was sold?

TRIAL EXAMINER: Yes.

MR. BARTON: That is right.

Now, at the time of the transfer, Mr. Schilling, how many employees were employed at the bottling plant?

THE WITNESS: I would have to look at the payroll records.

Q. (By Mr. Barton) What is your best estimate?

A. 50.

Q. Would you tell me who these people include? What the various job classifications were? [94]

A. I can give you department heads.

Q. Well —

TRIAL EXAMINER: He doesn't want names; he just wants job classifications.

The kind of jobs.

Q. (By Mr. Barton) For instance, I gather one job classification was driver-salesmen.

A. Right.

Q. How many driver-salesmen were there at that time, to the best of your recollection?

A. 8 or 10.

Q. What other classifications were there?

A. Independent distributors.

Q. And how many of those were there?

A. 10 or 12.

Q. And you are including those in your No. 50; is that right?

A. Yes, sir—no.

Q. No, sir? 10 or 12 in addition to whatever classifications were included in this 50?

A. We had office staff.

Q. How many of those?

A. 6 of those.

Q. Those were office-clerical; is that right?

A. Right. [95]

Q. Typists and such.

What other classifications?

A. The production crew.

Q. How many of those?
A. I believe 14.
Q. So we have got 14, and 6 is 20, times the salesmen. That leaves about 20 people. How many are those?
A. I believe that adds up to 32. We have a vending operation.
Q. How many people involved in that?
A. I believe four.
Q. What other prospects?
A. Fountain operations.
Q. How many in that?
A. At the time of the transfer?
Q. That is correct.
A. 2.
Q. What other classifications?
A. The warehousemen.
Q. How many warehousemen?
A. One—two. One warehouseman who is a checker; one who operates a forklift.
Q. What other classifications?
A. We have four or five of what we call speciality men or special vender merchandisers.
Q. Anybody else? [96]
A. I believe that about covers it.

MR. BARTON: What is my next exhibit?

THE REPORTER: No. 16.

MR. BARTON: I am marking for identification, General Counsel's Exhibit No. 16(a), which purports to be a copy of a letter addressed to Gene G. Schilling from myself dated November 18, 1969. It's a 2-page document.

(The document above-referred to was marked General Counsel's Exhibit No. 16(a) for identification.)

THE WITNESS: If I may sir, may I add the category of approximately four routes such as supervisors that are in our sales department?

Q. (By Mr. Barton) I am glad you reminded me; I meant to ask you about the supervisory personnel.

Will you tell us what the supervisory structure was at the time of the transfer?

A. They are termed district managers.

Q. Pardon me?

A. Their term is district manager.

Q. Are these the route supervisors; is that right?

A. Yes, sir.

Q. How many of those were there?

A. I believe four.

Q. These people have the power to hire and fire? [97]

A. No, sir.

Q. Can they recommend hiring and firing?

A. No, sir.

MR. BARTON: May we go off the record for a minute?

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: Back on the record.

Q. (By Mr. Barton) Aside from these gentlemen, who were the supervisory people?

A. Our production manager.

Q. One production manager?

A. Yes, sir.

Q. And anybody else?

What is his name, by the way?

A. George Steers.

Q. And there was yourself?

A. And William Schilling.

Q. What was his position?

A. He is sales manager.

Q. Is that the extent of the managerial hierarchy at the time of the transfer?

A. Our control, Neil Love, L-o-v-e

Q. Does that pretty much do it?

A. That does it.

MR. BARTON: I believe I indicated, your Honor, I was [98] marking 16 GC-A for identification.

TRIAL EXAMINER: Yes.

MR. BARTON: I also want to mark as General Counsel's Exhibit 16(b) an exhibit which purports to be a letter addressed to me, signed by Gene G. Schilling, dated November 28, 1969.

TRIAL EXAMINER: Allright.

(The document above-referred to was marked General Counsel's Exhibit No. 16(b) for identification.)

Q. (By Mr. Barton) Mr. Schilling, I show you General Counsel's 16(a) for identification and ask you if you are familiar with that document.

A. Yes, sir, I am familiar with this.

Q. Did you receive the original letter in the mail on or about that date? Several days thereafter?

A. I received the letter, yes, sir.

Q. I will show you General Counsel's Exhibit 16(b) for identification and ask if you are familiar with that document.

A. Yes, sir.

Q. Is that your signature on 16(b)?

A. Yes, sir.

Q. Did you cause this letter to be prepared?

A. Yes, sir.

MR. BARTON: I would offer General Counsel's 16(a) and 16(b) into evidence at this time. [99]

TRIAL EXAMINER: Any objections?

MR. JACKSON: No objections.

TRIAL EXAMINER: They may be received.

(The documents above-referred to heretofore marked General Counsel's Exhibit No. 16(a) and 16(b) for identification, were received in evidence.)

Q. (By Mr. Barton) Directing your attention to Item 3 in GC 16(b), Mr. Schilling, I note that you refer to the fact that at the time of the transfer all but three of the employees were retained.

A. Yes, sir.

Q. In making that statement, did you have reference to all the employees exclusive of the distributors?

A. No, sir.

Q. You included the distributors as well?

A. No, sir.

Q. I guess my question wasn't clear.

A. Possibly I didn't understand.

A. Let me put it to you again: Making that statement, you were not including the distributors?

A. I was not including the distributors.

Q. So in essence in that document you are saying that of these other classifications, two employees were not retained, two of the 50, or some that you enumerated before; is that correct? [100]

A. That is correct.

Q. And one was [replaced]?*

A. That is correct.

Q. And one was replaced about a year thereafter?

A. That is correct.

Q. Now, as to the distributors who had contracts with Golden State, I gather Golden State—that All American assumed all of those contracts; is that correct?

A. Yes, sir.

Q. So that all the distributors that were working for or with Golden State continued with All American; is that correct?

A. That is correct.

Q. Now, the time that Ken Baker was fired by Golden State, he was working as a driver-salesman, right?

A. Yes, sir.

Q. It is true, is it not, that as little as a week prior to his termination you informed Mr. Baker that you considered him to be a good man doing good work, right?

A. That is correct.

Q. It is also true, is it not, that in your opinion as the general manager of the bottling plant operation the most important phase of the job of driver-salesmen was developing routes, obtaining new accounts, obtaining additional displays and obtaining additional space in the cooler. Is that not [101] true?

A. That is part of their function.

Q. It was your feeling that was the most important function; isn't that true?

A. Those are important functions.

Q. You wouldn't say most important?

A. They are important functions, I will go along with that.

Q. Are there any functions of a driver-salesman that you would consider to be more important than developing routes, obtaining new accounts, obtaining additional displays, obtaining additional space in the cooler? Which I assume, I would gather means coolers in the space of customers that stock Pepsi Cola.

Would you say in your opinion those are the most important functions of a driver-salesman?

A. Those are important.

I would like to add to that, placing the point of purchasing advertising.

Q. Would that be included in obtaining additional displays?

A. No.

Q. What do you mean by points of purchasing advertising?

A. Points of purchasing advertising . . . advertise the product for sale and also building the good will of the company.

Q. In essence— [102]

TRIAL EXAMINER: Well, just so I will understand this some time in the future, what do you mean by points of purchase advertising as distinguished from displays?

THE WITNESS: A display, sir, is a carton or a display carton of Pepsi Cola for sale. The purchasing of advertising is a sign placed in or outside the store.

TRIAL EXAMINER: All right. Go ahead.

Q. (By Mr. Barton) And it is true, is it not, that you consider the actual driving and delivering of merchandise and picking up empty bottles to be fairly minor and routine aspects of a driver-salesmen's duties?

A. The driving part is minor.

Q. And also delivery is somewhat mechanical, is it not?

A. No, sir.

Q. You wouldn't consider that to be a minor aspect of the job?

A. No, sir. It's a major aspect of the job.

Q. You think that's a major aspect?

I believe you said, Mr. Schilling, earlier that you testified in the unfair labor practice proceedings in August of 1963; is that correct?

A. Yes, sir.

MR. BARTON: I will mark for identification General Counsel's Exhibit 17, volume 2 of the official report of proceedings before the National Labor Relations Board. [103] I will offer it for inspection to counsel.

TRIAL EXAMINER: What's the date of it?

MR. BARTON: August 22, 1963.

That was the second day of the proceedings.

(The document above-referred to was marked General Counsel's Exhibit No. 17 for identification)

Q. (By Mr. Barton) Mr. Schilling, I show you General Counsel's Exhibit 17 for identification and direct your attention to page 142 of that document.

Do you notice where it bears your name and indicates direct examination?

A. You mean here?

Q. Yes.

A. Yes.

Q. Now, will you read through that document for the next—to the top of Page 145? Read over that and see if you recall giving that testimony.

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

THE WITNESS: Yes.

Q. (By Mr. Barton) Have you completed that?

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: Back on the record.

Q. (By Mr. Barton) Do you recall giving that testimony, [104] Mr. Schilling?

A. Yes, sir.

Q. You gave it under oath, did you not?

A. Yes, sir.

MR. JACKSON: Before we go any further, I would like to ask if you are questioning on direct examination. You are relating to the point of time of 1963?

Is that what we are talking about?

MR. BARTON: That is right.

MR. JACKSON: All right.

Q. (By Mr. Barton) Now, let me read aloud with you, Mr. Schilling on Page 44 of that document in answer to a question from your attorney, Mr. Franz, and at that time he put a question to you: "Now, with respect to the relative importance of delivering the bottles and picking those up in comparison to some of those other duties you described, how would you compare the importance?"

Your answer was: "The delivering of the Pepsi Cola and picking up of the empties is actually the most minor of importance of the entire job. That is why we call them salesmen instead of driver-deliverymen.

"The most important phase of the job is developing their routes, obtaining new accounts, obtaining additional displays, obtaining additional [space]* in the cooler."

Is that your testimony there? [105]

A. Yes, sir.

Q. Was that your testimony at that time?

A. Yes, sir.

Q. Was that true testimony at that time?

A. (No response.)

Q. So with regard to any testimony you are giving this afternoon, the conflict in testimony this afternoon is in error, isn't it?

A. No, sir. What I say—

MR. JACKSON: Just a moment.

I think he is entitled to explain that answer.

TRIAL EXAMINER: His answer was "no."

MR. JACKSON: All right.

TRIAL EXAMINER: You can explore it on cross.

MR. JACKSON: My feeling was that the witness wishes to give an explanation as to his answer. I think he should be entitled to do so.

I will cover it on cross.

TRIAL EXAMINER: Well, I am sure it will come up again, so go ahead and explain it if you want to. If you can.

THE WITNESS: I can do it very quickly.

If the delivery—if the delivering of the full merchandise and picking up of the empties is done thoroughly, then, it ceases to be a problem. If the delivering of the full merchandise and picking up of the bottles is not done [106] thoroughly, it becomes a major problem.

MR. BARTON: I see.

Q. (By Mr. Barton) So when you told Mr. Baker that you considered him to be a good man doing a good job, you must have meant that he did a good job developing the route, obtaining new accounts, obtaining additional displays and obtaining additional displays in the cooler.

A. I said that with this thought in mind: We learned a long time ago that we get finer results from a person if we pat them on the back and tell them they are doing a good job. We would rather do this rather than tell the person point blank, "you are doing a lousy job, and shape up."

Q. What in your opinion makes a good distributor, Mr. Schilling?

A. To be a good distributor it is necessary to be a self-starter, he has personal pride in himself, personal pride in the product that he is selling, does the things that are necessary to increase his income, is a good salesman, builds good will with his customers, does everything possible to see to it that they are properly serviced and that their displays are up, gives them all the services that are necessary to keep the account in first-class shape.

Q. And in essence what you are saying is the attributes of a good distributor are pretty much the attributes of a good driver-salesmen? [107]

A. They have to do this of their own volition. It isn't a thing we supervise; it is the thing they have to have the initiative to do it upon their own.

TRIAL EXAMINER: At the current time you have both categories?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: And you did then? At least after you started having distributors, Golden State had both categories?

THE WITNESS: Yes, sir.

Q. (By Mr. Barton) Turning your attention back a moment, Mr. Schilling, do you recall my question to you regarding whether or not Mr. Crofoot was present on the occasion which the driver-salesmen walked out back in April of '63? Do you recall me asking you that question?

A. If Mr. Crofoot was present?

Q. Yes.

A. I don't recall you asking me that question. Possibly you did.

Q. Well, let me ask you: Do you recall Mr. Crofoot was present on that occasion?

A. He was not present.

You are referring to Mr. E. J. Crofoot?

Q. Yes. The gentleman who testified earlier.

A. Yes, he was not present. [108]

* * *

EUGENE SCHILLING

was recalled as a witness by and on behalf of the General Counsel and having been previously duly sworn, was examined and testified further as follows:

TRIAL EXAMINER: You are still under oath, Mr. Schilling.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

Q. (By Mr. Barton) Mr. Schilling, if I may direct your [113] attention back just briefly to our discussion yesterday regarding the occasion about April of 1963 when the men left the plant on the occasion giving rise to some of the unfair labor practices involved in the original proceedings in this case, we had some exchange as to whether Mr. E. J. Crofoot, Sr. was present on that occasion, and I understood you to say that he was not present at the time the men left the plant; is that correct?

A. That is correct, sir.

Q. Was he at any time present during succeeding events which transpired that day involving the men?

A. No, sir.

Q. He wasn't present at any time that day?

A. No, sir. Not to my knowledge.

Q. All right. Now, I might shift your attention again, Mr. Schilling, to the mode of compensation for the driver-salesmen during the period '62 through '64 in regards to the commissions these men were paid. Is

that commission computed the same way today as it was then?

A. My answer to that would be no, sir.

Q. Then would you tell me how the commission was computed during the period '62 to '64?

A. During that period the commissions were paid on a quarterly basis. If the total plant sales for the quarter, let's say the first quarter of 1963, were in excess of total plant sales [114] for the same quarter of 1962, there was a commission paid to each route salesman for every case that came off his truck. That commission was arrived at by a percentage of increase, total increase, of the plant sales for the quarter of '63 as compared to the similar quarter of '62. The greater the percentage of increase, the greater the commission was per case paid to the route salesman. If there was no increase for the quarter, there was no commission paid.

Q. Now, in the case of each individual driver-salesman, was his commission based upon the amount of increase and the number of cases sold or the total cases sold?

A. It was based on total cases sold.

Q. Mr. Baker started working for you in June of '62; is that right?

A. I believe that is correct.

Q. Now, when, to your recollection, did you first begin switching to this distributorship system, Mr. Schilling?

A. October 1st, 1964.

Q. And would you describe what that arrangement was, please?

A. It was on an experimental basis with us. We were attempting to derive some means whereby an employee

would be in business for himself and cease to be an employee of the Company, but have his own business. We attempted to set up roots whereby an independent distributor would make at least as much, if not more, money for himself than he would [115] working as a route salesman.

Q. And as I understood your testimony yesterday, or perhaps it was the statement of your counsel for the record, Pepsi-Cola sold beverages to the distributors at a discount, right?

A. At a distributor's price, correct.

Q. And that discount was in most instances 30 cents a case, right?

A. In most instances.

Q. A couple of exceptions where people had routes which required more extensive driving; is that right?

A. That is correct.

Q. Which routes were these? The ones which did not —which had a larger margin?

A. The one that I recall offhand was a route that seemed—it went from Roseville up through Auburn and up to Colfax and back. It covered a considerable amount of mileage.

Q. Was that the only one, or were there others?

A. That's the one that I recall right now.

Q. Your regular driver-salesmen drove trucks that were rented from Hertz by your Company; is that not correct?

A. That is correct.

Q. And to your knowledge, did all or most of the distributors continue to rent their trucks from Hertz?

A. They do to my knowledge rent their trucks from Hertz, yes, sir. [116]

Q. Now, who is the first driver-salesman who became a distributor, Mr. Schilling?

A. Don Thorne.

Q. And about when did he start as a distributor?

A. October 1st, 1964.

Q. Did he keep pretty much the same route he had as a driver-salesman?

A. No, sir. I believe that we added some additional stops to his territory.

Q. I see. So he took what he had plus a little more; is that right?

A. That is correct.

Q. About how many more stops were added to your recollection?

A. I don't recollect.

Q. About that same time Mr. Williford started as a distributor; is that correct?

A. I believe that's correct.

Q. Did he keep pretty much his same route?

A. I believe so. I'm not positive on that.

Q. It might have been a couple of extra stops added?

A. I can't answer that.

Q. Mr. Williams, he started about that same time, too, right?

A. I don't recall when George Williams started.

Q. He did become a distributor, though; is that right?

A. Yes, sir. [117]

Q. Within a few months thereafter, right?

A. I don't recall Mr. Williams' date when he became an independent distributor.

Q. I am showing you General Counsel's Exhibit 6, Mr. Schilling. Was this document prepared under your supervision?

A. Yes, sir.

Q. You examined it to see that it's correct?
A. Yes, sir.
Q. Now, Mr. Williams started—he shows a starting date of 10-64.
A. That is correct.
Q. Does that refresh your recollection?
A. That is when he started as a distributor.
Q. Did he keep pretty much his same route?
A. Mr. Williams, prior to coming to work for us, was working for Hires Root Beer Company.
Q. He started right in as a distributor?
A. Right.
Q. I see. Do you know who had Mr. Williams' route before he started?
A. I do not know without looking at the records. I believe it was Irv Evans, but I'm not positive.
Q. Irv Evans?
A. The territory that he took on was the South Sacramento area. [118]
Q. Irv Evans was not working for you at the time; is that right?
A. I wouldn't know without looking at the records.
Q. Now, Mr. Salo started about that same time as a distributor; is that not correct?
A. If that is what the appendix shows, or the exhibit shows.
Q. I'll keep this in front of you; if you need to refresh your recollectioon, you can take a look at it.
Is that correct?
A. Mr. Salo started November 9, 1964.
Q. And he took over a combination of his route and Mr. Helmer's route; is that correct?
A. I believe that is correct.

Q. And before he started in, you had offered Mr. Helmer the opportunity to become a distributor, had you not?

A. I don't recall.

MR. JACKSON: Who is Mr. Helmer?

THE WITNESS: I don't recall that, sir.

Q. (By Mr. Barton) Mr. Ames started as a distributor on October of '68, did he not?

A. That is correct, sir.

Q. And he kept pretty much his same route, did he not?

A. I believe we added onto Mr. Ames' territory.

Q. You added a little bit? How many stops, approximately?

A. I don't recall. [119]

Q. Was it very much?

A. When you say very much, we added on enough territory to a man's route so he would be in a position to make more money as a distributor than he was making as a route salesman.

Q. I see.

TRIAL EXAMINER: Where did you get this additional territory from?

THE WITNESS: Reducing Company routes.

Q. (By Mr. Barton) Oh, incidentally, I think I misled you.

TRIAL EXAMINER: Wait a minute. I don't understand that answer.

THE WITNESS: We have route salesmen who are paid on a weekly basis. In the event that one route abuts another route, there may be, say, one good stop that with service by an independent distributor would increase his earnings, whereby we would take the loss or whatever it would be, on the Company route.

In other words, we were more interested in the distributors' routes being productive at the time than we were of the Company's route salesmen.

TRIAL EXAMINER: In other words, the overall customers of the Company did not increase, per se, as of that moment?

THE WITNESS: No, sir.

TRIAL EXAMINER: So to increase it, increase a new distributor's route, you would have to take some stops away from [120] a salesman?

THE WITNESS: That is correct.

TRIAL EXAMINER: All right, go ahead.

Q. (By Mr. Barton) I asked you previously about Mr. Salo. Mr. Salo was a combination of his and [Mraule's route]*, was he not? Do you recall that?

A. I don't recall that, no, sir.

MR. JACKSON: A combination of Mr. Salo's and Mr. —

MR. BARTON: [Mraule. M-r-a-u-l-e.]*

Q. (By Mr. Barton) Mr. [Mraule]* had been offered a route, had he not?

A. No, sir.

Q. He did not?

Sherman Karr became a distributor about December of '64; is that not correct?

A. December of '64 is correct, sir.

Q. And he kept pretty much his same route, did he not?

A. To my knowledge, yes, sir.

Q. A couple of stops might have been added to puff up his sales?

A. There were adjustments that take place constantly on the routes.

Q. But it was pretty much the same ones?

A. Same area.

Q. And Myrel McHann became a distributor on or about the [121] first of the year of 1965; is that correct?

A. That is correct.

Q. Mr. McHann had been on a low volume, but which you had not decided to make a distributorship. He switched, is that not true, when he became a distributor?

TRIAL EXAMINER: Switched routes, you mean?

THE WITNESS: I don't remember that, no, sir.

Q. (By Mr. Barton) Do you recall that when he became a distributor, he took over the route which had been run by Mr. Helmer?

A. That is correct.

Q. And Mr. Helmer had been offered it before, but Mr. McHann took it over; is that right?

A. We did not offer Mr. Helmer a distributorship.

Q. I see.

Now, do you recall me—before we switch to that—Are these individuals I am enumerating here, do they include all the distributorships that were created at the outset?

A. I believe that is correct.

Q. And so that includes, if my count is correct, seven distributorships; is that correct?

A. We have one here, Ed Varesconi, January 1st of 1965.

Q. He had been a supervisor before; is that correct?

A. That is right.

Q. Whose route did he take over? [122]

I assume he didn't have a route when he was a supervisor; is that right?

A. I don't know whose route he took over. I could tell you the territory it consisted of.

Q. Now, do you recall a particular meeting at which you first discussed this proposed distributorship plan to the driver-salesmen on or about the first of October of '64, around in there?

A. Yes, sir.

Q. And this was aside from Mr. Thorne—I guess Mr. Thorne had started a little bit earlier—this was the first time that you had formally announced this distributorship plan to the remainder of the driver-salesmen; is that not correct?

A. That is correct.

Q. Incidentally, how many driver-salesmen were there at that time to your recollection?

MR. JACKSON: Is this prior to the conversion?

MR. BARTON: That is correct.

THE WITNESS: I believe 18 or 19.

Q. (By Mr. Barton) 18 or 19.

Your Honor, I am marking for identification General Counsel's Exhibit 18(a) which purports to be a letter addressed to Mr. M. G. Dempster from Mr. Gene G. Schilling, dated January 22, 1969. And I am also marking for identification as General Counsel's 18(b) a document bearing the title "Pepsi-Cola [123] Bottling Company of Sacramento," with commissions for the quarter 1962 to the end of 1968.

MR. JACKSON: I wonder if we may have a look at that.

MR. BARTON: Oh, I am sorry. I thought you already had a copy.

(The documents above referred to were marked General Counsel's Exhibits 18(a) and 18(b) were marked for identification.)

Q. (By Mr. Barton) Mr. Schilling, I show you General Counsel's Exhibit 18(a) and (b) for identification and ask if you are familiar with those documents.

A. Yes, sir.

Q. Was that the letter sent by you, signed by you?

A. Yes, sir.

Q. Was this document 18(b) prepared under your supervision?

A. Yes, sir.

Q. And it was sent to Mr. Dempster as an attachment to that letter, was it not?

A. This attachment, yes, sir.

Q. Yes. 18(b).

And before sending that, you checked to verify the accuracy of that, the figures on 18(b); is that correct?

A. Yes, sir.

Q. Now, this document lists all the driver-salesmen who had been in the employ of the bottling company, Pepsi-Cola Bottling [124] Company beginning, as labeled, from the fourth quarter of '62 to the end of '68; right?

A. That is correct, sir.

Q. And that document bears their dates of hire and dates of termination; is that correct?

A. Yes, sir.

Q. And you checked those figures to be sure they were accurate?

A. Yes, sir, I checked the figures, yes, sir.

Q. Now, I direct your attention to—well, I guess it's about the 33rd name on that list, Mr. George Williams.

A. Yes, sir.

Q. Do you see that?

A. Yes, sir.

Q. What starting date does that show for Mr. Williams?

A. June of 1964.

Q. And what termination date?

A. October of 1964.

Q. Now, this would be—would mean that in fact Mr. Williams did not start with your Company as a distributor, but had a brief period as a driver-salesman prior to that time; is that not correct?

A. That would be correct.

Q. I see. Do you recall now whether Mr. Williams, when he became a distributor, took over pretty much what was his [125] original route as a driver-salesman?

A. Yes, sir.

Q. He did.

Now, were you able to ascertain from that document exactly how many driver-salesmen were employed by Pepsi-Cola prior to the creation of the distributorships? Immediately prior?

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: Back on the record.

He said before 18 or 19. If you are trying to establish he was wrong, offer the document in evidence. If that is your point. I don't know what your point is.

MR. BARTON: I will leave this for a moment.

MR. JACKSON: Has the document been offered?

MR. BARTON: No, it has not.

TRIAL EXAMINER: No.

MR. JACKSON: We will offer it in that case as our exhibit.

TRIAL EXAMINER: Well, it's not your time to offer anything at this point.

MR. JACKSON: Oh, all right.

Q. (By Mr. Barton) Oh, incidentally, Mr. Willeford, had the route which had been Ken Baker's at the time of his discharge; is that not correct? [126]

A. Mr. Willeford worked in the same territory. I cannot say that the route had not been changed or revised.

Q. It was pretty much the same one; is that right?

A. He worked in that territory.

Q. Yes. And after Mr. Willeford became a distributor after a period of one year, his contract was not renewed; is that not correct?

A. That is correct.

Q. And Mr. Wagner took over his route; is that not correct?

A. I believe that's correct.

Q. As a distributor?

A. Yes, sir.

Q. And Mr. Wagner ceased operation of that route on or about the first of the year, 1968; is that not correct?

A. He ceased being a distributor as of approximately that date.

TRIAL EXAMINER: Meaning what?

THE WITNESS: I am not positive that he was on the same route.

TRIAL EXAMINER: You mean he switched back to being a driver salesman?

THE WITNESS: Mr. Wagner is a very old—he had been employed by us for a long time. He requested a distributorship. We gave it to him. At the end of a period of time he complained that his arms—he wasn't physically capable of [127] continuing on as a distributor and could he relinquish his distributorship and come back into the plant and work on our advertising department.

TRIAL EXAMINER: Not as a driver-salesman?

THE WITNESS: No, sir, he was unable to do so.

TRIAL EXAMINER: All right.

Q. (By Mr. Barton) And after Mr. Wagner stopped running that route, Mr. Simon took that over; is that not correct?

A. I believe that is correct, sir.

Q. Does Mr. Simon still run that route?

A. Yes, sir.

Q. Now, getting—

A. One second, please.

When you say: Mr. Simon is still running that route, may I say that it's possible that there may have been changes on the route, but Mr. Simon is in the same territory.

Q. In the same territory. I understand.

When you announced the distributorship scheme, when you first announced it to your driver-salesmen at that meeting, as I understand it, you told them that it was the high volume routes which were going to be turned over to distributorships. Does that square with your recollection?

A. No, sir.

Q. What did you tell them in that regard?

A. I told them that we were attempting to—we were going [128] to attempt an experiment, that we wanted to set the routes up on a basis of approximately 40,000 cases a year, 40,000 cases a year; that we didn't know at the present time how many distributors would be appointed, but that we were going to try it as an experiment.

Q. Well, did you indicate at all what routes were going to be converted?

A. No, sir.

Q. You didn't tell them at all that the low volume routes were going to be made into distributorships; is that correct?

A. No, sir.

Q. You didn't convey that idea?

A. No, sir.

Q. You didn't tell them that the men who were operating the high volume routes which were going to be converted would have them as distributorships, if they wanted them?

A. Would you say that again, please?

Q. Surely.

I gather from what you are saying you likewise don't recall telling these men that the men presently operating the high volume routes, which were going to be converted to distributorships could have them as distributorships if they wanted?

A. No, sir, we did not say that.

Q. And likewise, I guess it follows that you didn't tell them [129] if they didn't want the distributorships that those who had the high volume routes which were going to be converted, if they don't want them they could be transferred to the cities?

TRIAL EXAMINER: The city routes?

Q. (By Mr. Barton) Which were the low volume routes, I guess; is that correct?

A. I don't recall a conversation to that effect.

Q. By the way, Mr. Schilling, how long before the actual purchase of Pepsi-Cola Bottling Company by All American Beverages (known as Sam Snead) did you have contact with any one employed by or representing Sam Snead?

A. If I may, I would like to say [in answer to]* that question at the same time that Mr. Crofoot met them for the first time.

Q. Well, if you may, is that your recollection?
A. Yes, sir.
Q. And about when in time would that be?
A. I believe it was in December of 1967.
Q. What was the occasion of that meeting?
A. I—

TRIAL EXAMINER: Am I understanding that you met them then, too? You were there, too?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Okay.

Q. (By Mr. Barton) What was the occasion of that meeting? [130]
A. They came to see the bottling plant in Sacramento and to see what kind of an operation we had and to discuss the sale of it with Mr. Crofoot.
Q. Did they discuss the possible sale in your presence?
A. There was very little discussion in my presence.
Q. Did anyone from All American—

TRIAL EXAMINER: Go ahead.

MR. BARTON: Pardon me.

TRIAL EXAMINER: Go ahead.

Q. (By Mr. Barton) Did anyone from All American at that time or at any time prior to the actual purchase meet with you to discuss in detail the business operations at the bottling plant?
A. In my presence, alone?
Q. Well, alone, or with someone else. But asking questions of you.
A. Well, I was with Mr. Crofoot the day they were here.
Q. That was the only time?
A. Yes, sir.

Q. And they didn't discuss the operation of the business with you in any detail on that day, is that correct?
A. I would say primarily that is correct.
Q. And was the only time you had with them prior to the purchase by All American; is that correct?

MR. JACKSON: Just a minute, if your Honor, please, I think [131] his testimony was that was the first occasion—I believe that was the earlier question.

TRIAL EXAMINER: I think he understands English. If it is not correct, he will say so. It is a question, and this is the equivalent of cross, you know.

MR. JACKSON: The question is assumptive.

TRIAL EXAMINER: No, he finished by saying: "Is that correct?"

THE WITNESS: I must say the first time I met these gentlemen was the first time Mr. Crofoot saw them.

TRIAL EXAMINER: You don't understand the question.

Q. (By Mr. Barton) Was there any other occasion prior to the actual purchase, the signing of the purchase agreement, at which time you met with any representative from All American?

TRIAL EXAMINER: After this first time.

THE WITNESS: During the first meeting they asked if I would stay on as manager.

TRIAL EXAMINER: No. You still are not answering the question.

Did you ever meet with any representative, have a meeting of the people that bought the plant after that first meeting and before the transfer? You understand that, do you? The question?

THE WITNESS: Yes, sir. Yes, I do, sir, and my answer [132] would have to be yes, I did.

TRIAL EXAMINER: That's his question.

MR. BARTON: Thank you.

Q. (By Mr. Barton) How many times?

A. One time, to my recollection.

Q. One additional time. So you met with them twice, altogether?

A. Correct.

Q. Prior to the purchase, when was this second occasion?

A. Prior to the sale of the plant Mr. Haley came out from Springfield, Ohio to look at our operation.

Q. Do you recall about when that was?

A. No, sir, I do not.

TRIAL EXAMINER: That was in January? The sale was supposed to have occurred on January 31st.

THE WITNESS: I don't recall.

TRIAL EXAMINER: Well, it was after the first occasion and before January 31st?

THE WITNESS: I believe so.

TRIAL EXAMINER: That's close enough. What's the difference.

MR. BARTON: Okay.

Q. (By Mr. Barton) What did you discuss on that occasion?

A. Mr. Haley and I did discuss the population of our franchise, the truck averages of case sales, our per capita, the [133] general operation of the bottling plant.

TRIAL EXAMINER: "Per capita", did you say?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: What does that mean?

THE WITNESS: The number of bottles consumed, the number of bottles of Pepsi-Cola consumed by our people in a year. It is a means of measure, sir.

Q. (By Mr. Barton) How long did your discussion of Mr. Haley last?

A. Approximately a half hour.

Q. It was just that one half hour discussion?

A. Yes, sir.

Q. And during that half hour, did he examine your books?

A. No, sir.

Q. You keep the books, though? You kept them at that time?

A. The books were at our bottling plant.

Q. And it was your responsibility as general manager to oversee the keeping of those books, right?

A. No, sir.

Q. Who did that?

A. Mr. Crofoot.

Q. During this half-hour discussion, did you have any conversation with Mr. Haley about any problems you had had or were having in operating the bottling plant?

A. No, sir. [134]

Q. He didn't ask about them?

A. We discussed future plans, but there were no problems.

Q. Didn't he ask you if you had any problems?

A. No, sir.

Q. Did he discuss with you at that time the possibility of you continuing on as general manager of the plant?

A. That had been discussed previously to that.

Q. At the first meeting?

A. That is correct, sir.

Q. With Mr. Haley?

A. No, sir.

Q. Who is or was that discussed with?

A. Mr. Sarles.

Q. How long did your meeting with Mr. Sarles last?
A. About 15 minutes.
Q. It was during that 15 minute discussion that you discussed the possibility of your continuing on?
A. Correct.
Q. Did you ask him what the terms and conditions of your continuing on would be?
A. The salary was discussed.
Q. Anything else?
A. With—We discussed if William Schilling would stay on, continue on, would George Steer, our production manager stay on. [135]
Q. And he asked you about that?
A. Yes, sir.
Q. And what did you tell him?
A. I told him I thought that they would.
Q. Did he talk to these individuals?
A. I believe they did talk to Mr. Steer.
Q. And the discussion of your own future at the bottling plant, did you discuss what your future responsibilities would be?
A. My future responsibilities would be that of general manager with consultation from Mr. Haley.
Q. And did they indicate to you they were going to give you more authority than you presently had?
A. In a sense of the word, yes, sir.
Q. Did they ask you if you had any experience in labor relations problems?
A. No, sir.
Q. They did not?
You had been in charge of labor relations problems with the Company, though, had you not?
A. I had what?
Q. You had been in charge of labor relations matters at Golden State?

A. Yes, sir.

Q. So you did have some experience in that area, right? [136]

A. Yes, sir.

Q. But you didn't discuss that experience?

A. No, sir.

Q. And you remained in charge of labor relations under the new ownership, right?

A. Yes, sir.

Q. Incidentally, Mr. Schilling, at one point you had been interested in purchasing the bottling plant yourself, had you not?

A. Yes, sir.

Q. When was that?

A. I think that was in '62 or '63.

Q. Was it the same time as these labor relations problems involving Ken Baker and other driver-salesmen developed, was it not?

A. I believe—well, no, it —

When did the labor relations problems start?

Q. Well, around the first half of 1963; is that right?

A. No. I think I was trying to buy—making, negotiating a sale for the plant prior to that date.

Q. You weren't trying then during the course of these problems in the early part of '63?

A. I was always trying.

Q. You have been trying all the way through, all the way up to the purchase by All American; is that right? [137]

A. No, sir, I finally gave up.

Q. When did you give up?

A. Probably in '66.

Q. It's true, then, that during 1963 when these problems involving Ken Baker developed, these problems in-

terfered with your negotiations with Mr. Crofoot; is that not true?

A. No, sir.

Q. Well, you told some of your employees that that was a fact, had you not?

A. That labor relations problems had interfered with what?

Q. With your negotiations to purchase the plant.

A. Not in that sense of the word, no, sir.

Q. Did you tell them anything like that during this period?

A. I said that I would like to have the labor relations problems solved.

Q. Because it was interfering with your negotiations?

A. That I was trying to negotiate for the sale of the plant or the purchase of the plant.

Q. And that these problems were interfering with those negotiations; isn't that what you told these employees?

A. Not in those words, no, sir.

Q. What words did you use?

A. I was inferring that the sale of the plant—the purchase of the plant would be a lot easier if we had no labor relations problem. [138]

Q. And that was true, right?

A. It was not an important issue, no, sir.

Q. You told these people that in fact it was not true.

A. I am not saying it was not true; I am saying it was not an important issue.

Q. But it was true what you told the employees?

A. That is correct.

Q. Now, when was the first time you discussed this backpay matter involving Ken Baker with Mr. Haley of All American?

A. At 8:15 this morning.

Q. That is the first time you mentioned it at all?
A. Yes, sir.
Q. Was that the first time also that you discussed with any other representative of All American?
A. No, sir. I called Mr. Davis who is an attorney in Providence, Rhode Island on Friday of last week.
Q. And he is an attorney for All American; is that right?
A. Correct.
Q. Is he your house counsel?
A. No, sir.
Q. He just represents them?
All right.
And was that the first occasion that you discussed it with anyone from All American?
A. That's correct. [139]
Q. What did you tell Mr. Haley when you talked with him about it this morning?
A. I told him that I had called Mr. Davis Friday and that my reason for mentioning it to him today was that he is going to an All American Board of Directors' meeting this coming Tuesday and that the issue might be—Mr. Davis might mention to him that I had talked to him last Friday and that we were in the process of a National Labor Relations Board hearing concerning a Ken Baker who had been employed by Golden State Bottling Company dating back to a previous date.
Q. Was Mr. Haley surprised about this information?
A. No, he just wanted to know what the details of it were and I explained it to him.
Q. But he hadn't known about it before your call; is that right?
A. Pardon me?

Q. He hadn't known about it before your call?

A. No, sir.

Q. Did he ask you why you hadn't mentioned it before?

A. No, sir.

Q. Did he express any irritation that you had not?

A. No, sir.

Q. Did he give you any instructions on how to proceed?

A. No, sir.

MR. BARTON: I am marking for identification as General [140] Counsel's Exhibit 19, a set of three documents, the first of which purports to be a copy of a letter from Gene Schilling, addressed to William B. Luck, Esquire, bearing the date of November 14, 1969.

TRIAL EXAMINER: What was the name of the recipient?

MR. BARTON: Luck, L-u-c-k, bearing an attachment—

MR. JACKSON: What was the date of the letter?

MR. BARTON: November 14, '68.

MR. JACKSON: Thank you.

MR. BARTON: Bearing two attachments. The first, which is a two-page document bearing a heading entitled "Substitution of Attorneys", bearing the purported signature of Gene Schilling; the second attachment is an affidavit of service, bearing the purported signature of Gene Schilling.

TRIAL EXAMINER: Are these physically attached?

MR. BARTON: Yes, they are.

Q. (By Mr. Barton) Mr. Schilling, I will show you General Counsel's Exhibit 19 for identification and ask if you are familiar with the contents?

A. Yes.
Q. Did you cause those documents to be prepared?
A. These documents, I believe, were prepared by Mr. Jackson.
Q. And they were sent to you; is that right?
A. That is right, sir.
Q. For your signature? [141]
A. Yes, sir.
Q. And the first page of that exhibit for identificaton is a letter, the original of which you caused to be sent to the Clerk of the Ninth Circuit Court of Appeals, right?
A. Then what did you say, sir?
Q. You caused the original document of which that is a copy to be sent to the Ninth Circuit Court of Appeals, right?
A. That is correct.
Q. With carbon copies to the Regional Director, 20th Region of the National Labor Relations Board?
A. That is correct.
Q. To Assistant General Counsel, and other attorneys of record?
A. That is correct.
Q. And the first attachment is the substitution of attorneys which you yourself signed; is that not correct?
A. Yes, sir.
Q. And the other occasion of the signing of this document was the name changed by the firm which Mr. Jackson was a member; is that correct?
MR. JACKSON: Objected to as assuming something not in evidence.
MR. BARTON: Well, I don't think—
TRIAL EXAMINER: Objection overruled. You may answer.

THE WITNESS: Well, you will have to ask the question [142] again, please.

TRIAL EXAMINER: Will you read the question?

MR. BARTON: Wait a minute.

Will you read it, please.

(Record read.)

THE WITNESS: To my knowledge, Jackson had been with Hill, Farer & Burrill and is now with [Hodge],* Jackson, [Kumler]* & Croskey.

Q. (By Mr. Barton) I see. So he was changing firms, right?

A. I believe that is correct, sir.

Q. You wished to notify the Ninth Circuit Court of Appeals before which this case was pending of this name change, or this change of attorney representation; is that correct?

A. That is correct.

Q. The last attachment of the affidavit of service, you signed that document and sent it along with the others, right?

A. That is correct.

Q. Now, shortly after mailing those documents you received knowledge of the final decree of the Ninth Circuit, which with respect to Ken Baker was adverse to Golden State; is that correct?

A. That's correct.

MR. BARTON: I am marking for identification, a document which purports to be a copy of a letter addressed to Golden State Bottling Company, signed by M. C. Dempster, dated December [143] 1968, December 9, 1968. And that is G.C. 20 for identification.

TRIAL EXAMINER: To Golden State, not to any individual?

MR. BARTON: Pardon me?

TRIAL EXAMINER: It is addressed to Golden State and not to any individual?

MR. BARTON: That is right. Golden State. And it bears the salutation, "Gentlemen,".

(The documents above referred to were marked General Counsel's Exhibits No. 19 and 20 for identification.)

Q. (By Mr. Barton) I show you General Counsel's Exhibit No. 20 for identification, Mr. Schilling, and ask you if you ever saw the original of that.

A. Yes, sir, I have seen this.

Q. That letter came to your attention at the bottling plant, right?

A. Yes, sir.

Q. And you read the contents?

A. Yes, sir.

TRIAL EXAMINER: Who is Mr. Dempster? This is the second time I have heard his name.

MR. JACKSON: He is compliance officer of the 20th Region.

TRIAL EXAMINER: Okay.

MR. BARTON: Maybe we can just stipulate that. [144]

MR. JACKSON: It might save time with a lot of this testimony and we stipulate to the fact a lot of this was done under the name of Golden State Bottling Company, because we were totally unaware of that, that there had been any change in the parties.

MR. BARTON: I don't want any stipulation right now, your Honor.

MR. JACKSON: I can produce all sorts of correspondence.

TRIAL EXAMINER: Who is we?

MR. JACKSON: Myself and my office.

Q. (By Mr. Barton) Now, that letter, G.C. 20, requested you to take certain action, did it not?

A. The letter what?

Q. Requested you to take certain action? Requested certain action be taken?

A. Oh, yes, sir.

Q. First, it requested you to sign copies of a notice to all employees of that posted in and around the plant; is that not correct?

A. Yes, sir.

Q. It also requested that you return one copy of the signed notice, along with the certificate of posting to the Regional Office in San Francisco; is that not correct?

A. Yes, sir.

Q. And you signed and posted those notices as directed, right? [145]

A. Yes, sir.

MR. BARTON: I will mark as General Counsel's Exhibit 21(a) for identification a document which purports to be an exhibit of posting, signed by G. C. Schilling; and as General Counsel's Exhibit 21(b) for identification, a document which purports to be notice to all employees, bearing the signature of Gene Schilling.

(The documents above referred to were marked General Counsel's Exhibits Nos. 21(a) and (b) for identification)

Q. (By Mr. Barton) Mr. Schilling, I show you G.C. 21(a) and (b) for identification and ask if you have ever seen those documents before?

MR. JACKSON: I wonder if we could see them now, counsel.

THE WITNESS: Yes, sir.

MR. BARTON: You have seen those.

Q. (By Mr. Barton) And you signed each of those, right?

A. Yes, sir.

Q. It is your signature?

TRIAL EXAMINER: Do they have dates on them?

MR. BARTON: Yes. I am sorry.

THE WITNESS: Yes, sir.

Q. (By Mr. Barton) G.C. 21(a) bears a date, 11 December of '68, and the same date is on G.C. 21(b) for identification.

TRIAL EXAMINER: Thank you. [146]

Q. (By Mr. Barton) And you returned those to the 20th Region in San Francisco, as directed, is that correct?

A. Yes, sir.

Q. And if I may refer you back again just briefly to G.C. 20 for identification, I note that that letter also requests you to make an offer of reinstatement to Ken Baker as directed by the court decree; correct?

A. Yes, sir.

Q. And in fact you mailed the letter on this, offering him reinstatement to the position of driver-salesman; is that correct?

A. That is correct.

TRIAL EXAMINER: When?

MR. JACKSON: 11 December 1968 was the date of the letter, I believe.

Q. (By Mr. Barton) That does square with your recollection, Mr. Schilling, is that correct?

A. That is correct.

TRIAL EXAMINER: As a driver-salesman did you say?

MR. BARTON: As a driver-salesman.

MR. JACKSON: That is correct, Mr. Hearing Officer.

TRIAL EXAMINER: I didn't hear what you said.

MR. BARTON: Yes.

TRIAL EXAMINER: Mr. Jackson.

MR. JACKSON: I said it was correct. He was offered [147] reinstatement as a driver-salesman.

TRIAL EXAMINER: I assume that letter is available?

MR. BARTON: Yes. I don't have it ready at hand; I didn't intend to introduce it. I pressumed that Mr. Jackson would.

TRIAL EXAMINER: By whom was it signed and on behalf of whom?

MR. JACKSON: Signed by Mr. Schilling on behalf of Mr. Schilling, Pepsi-Cola Bottling Company of Sacramento.

TRIAL EXAMINER: 11 months after the sale?

MR. JACKSON: That is correct.

Again, I offer by way of explanation, and we will prove this later—

TRIAL EXAMINER: I hope you will because I am getting more confused by the minute.

MR. JACKSON: The fact we didn't have any—we were totally unaware of this transfer.

MR. BARTON: I would object to a statement by counsel.

TRIAL EXAMINER: I know counsel's statements do not constitute evidence, but while we are on this subject of the specification, paragraph 10(a) alleged or alleges that you, Mr. Jackson, had been an attorney for a company—for All American at all times material herein. I am paraphrasing it, but do you deny that?

At what point in time did you become an attorney for All [148] American, if ever?

MR. JACKSON: I was unaware of the fact that the Company was owned by All American until this last November, I believe it was, when we were preparing the answer for filing.

TRIAL EXAMINER: The answer to the specification?

MR. JACKSON: Yes, the answer to the backpay specification. It was only then that we discovered, or I learned that there had been a change in ownership and there was several telegrams to the Region requesting an extension of time to clarify this.

TRIAL EXAMINER: You told me at the opening of this proceeding you were representing All American.

MR. JACKSON: At the present time, that is quite correct.

TRIAL EXAMINER: And my question was: When did you start representing them?

MR. JACKSON: Technically speaking, I think our representation commenced at that time.

TRIAL EXAMINER: When you found out, you mean you started representing them without any authorization from them?

MR JACKSON: Well, if I may explain, sir, we were retained by the Bottlers' Association. The Bottlers' Association technically speaking, are our clients. The Pepsi-Cola Bottling Company or the Pepsi-Cola Bottlers in San Francisco is a member of that Association and by virtue of its membership we have represented the Pepsi-Cola operation in Sacramento in [149] this proceeding from its inception.

Now, of course, when the plant changed hands the successor corporation became a member of the Association at the same time. However, we were unaware of that and continued to deal with Mr. Schilling at the managerial level without knowledge of this and continued to represent the Bottling Association.

TRIAL EXAMINER: Was there correspondence?

MR. JACKSON: There was correspondence, but I —this was with Mr. Schilling. There was a great deal.

TRIAL EXAMINER: Wouldn't he use the letterhead of All American rather than Golden State?

MR. JACKSON: Pepsi-Cola letterhead. And I don't recall frankly, that the name "All American" appeared on any of it.

TRIAL EXAMINER: All right. I just asked for your statement as an attorney of record here when you started representing All American.

MR. JACKSON: Well, actually, I think we started—

TRIAL EXAMINER: As a member of the Bottling Association, if you want to put it that way.

MR. JACKSON: Actually, the fact is that we represented them from the time of the takeover.

TRIAL EXAMINER: But you didn't know it.

MR. JACKSON: No, that is the essence of the thing.

TRIAL EXAMINER: When do you state you learned it for the first time that you were representing them as a member of [150] that Association?

MR. JACKSON: That was approximately November 1969 at which time we requested an extension of time to answer in order to clarify the question of our representation, exactly that point. And it was at that time we were assured that we would continue to

represent this bottler and at the same time to represent Golden State to a conclusion in this proceeding, but it was precisely for that purpose.

TRIAL EXAMINER: I take it you are not now representing Golden State as a member of the Association?

MR. JACKSON: That is correct.

TRIAL EXAMINER: When did that change occur?

MR. JACKSON: Well, it occurred at the time of the clarification.

TRIAL EXAMINER: And how was that handled? Was anything done or did it just happen by osmosis?

MR. JACKSON: No, no. I wrote a letter and I'll be glad to put it in evidence. I wrote a letter to both All American and to Golden State explaining this position. Both parties got together and requested that we continue to represent them both. I explained the certain conflicts that arose by virtue of this situation. They resolved that matter between themselves and each requested that I continue to represent them both to the conclusion of this proceeding.

TRIAL EXAMINER: All right. [151]

MR. JACKSON: But until that time being we had assumed that Golden State—

TRIAL EXAMINER: You only represented the Bottling Association and Golden State, let's say, before the National Labor Relations matters?

MR. JACKSON: That would be correct.

TRIAL EXAMINER: You had nothing to do with the negotiations of, or the transfer of it?

MR. JACKSON: Nothing whatsoever.

TRIAL EXAMINER: As attorneys.

MR. JACKSON: No.

TRIAL EXAMINER: For the Association.

MR. JACKSON: Nothing. And as I say, we had no knowledge of it at all.

TRIAL EXAMINER: Okay.

MR. JACKSON: As far as I am aware, the Association had nothing to do with the Association.

TRIAL EXAMINER: Well, I wouldn't assume they would have, but they must have received notice of a change of membership.

MR. JACKSON: This is entirely possible that they were aware of change in ownership.

TRIAL EXAMINER: All right, go ahead.

I say they must have. Maybe they didn't. They should have, let's put it that way.

MR. JACKSON: Surely, I would certainly agree with that. [152]

Q. (By Mr. Barton) Continuing, Mr. Schilling, with the sequence of events shortly after receiving this communication from the Regional Office, you met with Mr. Dempster, the compliance officer from that office and Mr. Jackson, to discuss computation of the backpay owing Mr. Baker; is that correct?

A. That is correct.

Q. This was on or about the 8th of January 1969?

A. Correct.

Q. And at this meeting you gave him what evidence you had as you were required to do by the court order relating to what Ken Baker might have earned during the period; is that not correct?

A. I told him I would supply that information.

Q. Indeed, you felt you were compelled to supply that information?

A. Pardon me?

Q. You considered yourself compelled to supply that information, did you not?

A. Yes.

Q. And was that the only meeting you had with Mr. Dempster?

A. No, sir. We met with Mr. Dempster on one other occasion on a future date.

Q. And that was after you had received correspondence suggesting what the Regional Office considered to be a fair [153] settlement of the backpay question, did you not?

A. That was a later date, yes, sir.

MR. BARTON: Now, your Honor, I am marking as General Counsel's Exhibit 22 for identification, what purports to be a carbon copy of a letter addressed to Morton B. Jackson from M. C. Dempster, compliance officer, bearing the date March 26, 1969.

MR. JACKSON: What was the date, please?

MR. BARTON: March 26th, 1969.

Indicating a carbon copy being sent to Mr. [Gene]* Schilling.

(The document above referred to was marked as General Counsel Exhibit No. 22 for identification.)

Q. (By Mr. Barton) I show you General Counsel's Exhibit 22 for identification and ask you to identify and examine that document.

A. I have seen this letter, yes, sir.

Q. You received a copy of that letter in the mail?

A. A copy of it, yes, sir.

Q. And you read the contents when you received it?

A. Yes, sir.

Q. And you became aware once you read the contents that the Regional Office considered that your Company owed Mr. Baker a considerable sum of money; is that not correct?

A. Yes, sir.

Q. And I take it after receiving that letter, you were in [154] touch with Mr. Jackson; is that correct?
A. Yes, sir.
Q. And you considered the possibility of whether to settle up or proceed in legal proceedings; correct?
A. I discussed this with Mr. Jackson, yes, sir.
Q. And ultimately you reached the conclusion that you chose not to settle?
A. Pardon me?
Q. Ultimately, you reached the conclusion you preferred not to settle; is that right?
A. That is correct.
Q. And you instructed Mr. Jackson to communicate that decision to the Regional Office in San Francisco?
A. Correct.
Q. I guess you were aware that one consequence of this decision was the result of some further legal expense, right?
A. Not further legal expense, no, sir.
Q. It wouldn't cost you anything if you had to go to a formal hearing? You would have to—The corporation would have to supply their attorneys for that proceeding, right?
A. Those expenses are paid by the Association.
Q. The Bottling Association picks up the tab on all of that?
A. Yes, sir.
Q. Doesn't it matter how much litigation? How frequently they pick up the tab if you decide to go ahead with legal [155] action; is that right?
A. That is right.
Q. How many members are in that Association?
A. I believe all the bottling plants in the Sacramento area.

TRIAL EXAMINER: We don't know how many plants there are in the Sacramento area.

THE WITNESS: I see.

TRIAL EXAMINER: Roughly.

THE WITNESS: Six or seven.

Q. (By Mr. Barton) What are the monthly dues or fees to the Association? Is that it?

A. We pay dues to the Association, yes, sir.

Q. Monthly dues?

A. No, sir.

Q. Yearly?

A. As needed, sir.

Q. I see. Are contributions as needed equal from all members?

A. No, sir.

Q. What determines the size of the shares?

A. It was based on the number of trucks operated by each bottling plant.

Q. Then you total up the number of trucks and divide that into the number of trucks operated by each to get a percentage; is that right?

A. No. We were—our dues are determined by the number of [156] trucks. Each bottler pays the same amount of dues per truck.

Q. Per truck?

TRIAL EXAMINER: Well, it comes out to the same thing.

MR. BARTON: Yes.

Q. (By Mr. Barton) Who administers the finances of the Bottlers' Association, Mr. Schilling?

A. I believe Mr. Jack Sellers.

Q. Who is Jack Sellers?

A. He is, I believe, president of Coca-Cola Bottling Company of Sacramento.

Q. And he lets everyone know when you need more money?

A. Yes, sir.

Q. And he keeps the books, records and receipts and disbursements; is that right?

A. Yes, sir.

Q. And is his responsibility memorialized in any kind of articles [of incorporation]* or agreement or anything of that nature?

A. I don't follow you, sir.

Q. Well, the rules under which he must operate and the members must operate, are they written down anywhere?

A. Not to my knowledge.

Q. Are there such rules?

A. Pardon me?

Q. Are there such rules? [157]

A. No, sir.

Q. No rules whatsoever?

Are there any rules regarding what kind of expenses the membership must draw from the funds in that exhibit there?

A. No, sir.

Q. You could draw anything out of there whatsoever?

A. It has not happened.

Q. But you could if you wanted to?

A. I doubt it.

Q. What would stop you?

A. I don't know what you have reference to, sir.

Q. Well, okay.

Let's assume that you had a fire at your bottling plant. I guess you did; right?

A. That is right.

Q. That required considerable repair expenditure?
A. That is right.
Q. Did you draw that repair expenditure out of the bottling funds?
A. No, sir.
Q. If you wanted to, could you?
A. No, sir.
Q. What made you decide that you could not?

MR. JACKSON: I have an objection to this line of testimony, but there is nothing whatsoever that indicates whether [158] they have to furnish—any supposition that the members are entitled to withdraw any funds from the Association.

MR. BARTON: That has been Mr. Schilling's testimony, I believe, your Honor.

TRIAL EXAMINER: I don't know if I would call it withdrawing funds, but there has been testimony that—he just got through saying that they pay the legal expenses. They pay the lawyers for this fee.

MR. JACKSON: That the Association does.

TRIAL EXAMINER: Right.

Well, in that sense, Mr. Barton is referring to withdrawing funds. In other words, that becomes a fund, if you want to call it that.

MR. JACKSON: Yes, that is true.

TRIAL EXAMINER: That is used to pay you, for example, to represent the Association in labor matters.

MR. JACKSON: That is correct. We are paid from that.

TRIAL EXAMINER: That is withdrawal of funds in the sense he is using it, in this particular essence for the benefit of All American, I assume. Is that not your point?

MR. BARTON: That is correct.

MR. JACKSON: I didn't so infer.

TRIAL EXAMINER: But he is trying to elicit from the witness under what circumstances this can be done. Obviously, there must be some documents which set forth the arrangement. [159]

MR. JACKSON: Perhaps I used the term "withdrawal" rather than [disbursement].*

TRIAL EXAMINER: That is why he referred to letters of incorporation or something like that. There must be an Association agreement which sets forth the procedure under which this occurs.

THE WITNESS: This was in agreement to the number of trucks that we each operated and that we would pay X-number of dollars per truck.

Q. (By Mr. Barton) So there were regulations about payments in, but nothing about payments out?

A. The payments out were to pay Mr. Jackson's legal fees.

TRIAL EXAMINER: Yes.

Q. (By Mr. Barton) Exclusively?

TRIAL EXAMINER: Who decided that? How did that come about?

THE WITNESS: That was as I recall, by a vote of the membership.

Q. (By Mr. Barton) And is that the only report of the membership that has been made? Is that the only decision that has been made?

A. Considering—Concerning fees, yes, sir.

Q. Or any kind of disbursements from the fund at all?

A. I believe that we had one disbursement made, a minor one to a campaign fund, but I don't recall the details. [160]

Q. A political campaign?

A. Or it may have been just—It was a settlement among the bottlers.

Now, the only disbursements out of this fund, to my knowledge, have been to Mr. Jackson.

Q. I would assume the sole purpose of that Bottlers' Association is to pay Mr. Jackson; is that correct?

A. That is correct.

Q. So this arrangement has been drawn up—How long has it been in existence?

A. I would say 1960. I am not positive.

Q. 1960. That is all the bottling companies have been retaining Mr. Jackson as their attorney in labor relations matters since 1960?

A. The Association, originally it retained a firm of Hill, Farer & Burrill.

Q. Mr. Jackson was a member of that firm, right?

A. I believe he was.

Q. He has been handling the labor relations problems for the Bottling Association since 1960?

A. He was one of the attorneys.

Q. One of them.

And when you formed that Association, was the idea then to limit its function to [handle]* the payments of expenses incurred in the course of labor relations problems? [161]

A. Well, I would say that's correct.

Q. So the notion was, I gather from what you're saying, that the bottling companies wanted to get together in labor relations matters, right?

A. Yes, sir.

Q. In any labor relations problem which affected one, they figured this was everybody's business?

A. That affected one what?

Q. If it affected one, it affected all. Is that what they thought, was it not?

A. It's possible.
Q. So then, it would be correct to say that all disbursements from that fund concerned payments of legal fees incurred as a result of labor relations problems; is that correct?
A. Correct.
Q. So I would assume, then, as a consequence of continuing problems you have had as a result of this unfair labor practice matter, assessments have been frequent and probably fairly substantial; is that correct?
A. They are not as frequent as they were.
Q. When were they the most frequent?
A. When the Association was first formed.
Q. In 1960?
A. Whenever the Association was first formed.
Q. You testified first that it was 1960; is that right? [162]
A. I think it was approximately that time. I'm not positive.
Q. And they continued to be pretty heavy during the course of the original litigation in this matter; is that right?
A. That is correct.
Q. And on through the court proceedings, 1965 and '66; is that right?
A. I believe that's correct.
Q. And it was kind of a lull and they tapered off a little?
A. Yes.
Q. And then they picked up again?
A. I don't know that they picked up again.
Q. When was the last time you were assessed?
A. I believe three months ago.

Q. What was the amount of that assessment?
A. Our assessment was $1,088.16, I believe.
Q. And when was the assessment? Immediately prior to that?
A. I would have to look at the records. I believe three months before that.
Q. Was that about the level the assessment would run, about a thousand bucks every three months?
A. I would have to take a look at our records.
(Short recess.)
TRIAL EXAMINER: The hearing will be in order.
Q. (By Mr. Barton) I would get a—It would be my assumption, though, fairly consistently the assessments on a yearly [163] basis were up in the thousands of dollars; is that not right?
MR. JACKSON: In respect to this company or all of the members?
MR. BARTON: In respect to Mr. Schilling's bottling plant.
THE WITNESS: With the Pepsi-Cola Bottling Company, the assessments were in excess of a thousand dollars a year, yes sir.
Q. (By Mr. Barton) Probably several thousands each year?
A. Yes.
Q. And that was yearly throughout the period of its existence?
A. Not throughout the period of the existence, no, sir.
Q. When were they not at that level?
A. At the original formation of the Bottlers' Association, there were no assessments.
Q. And once you started assessments that was when?
A. I'd have to look. I think '62, '63, around in there.

Q. And after that date, up to the present time, the yearly assessments have been up to a thousand dollars a year?

A. They have been over a thousand dollars a year.

Q. Several thousand?

A. I don't know what several thousand means. Three, four . . .?

Q. Three, four or five thousand each year.

And these assessments, I presume, were recorded in the Company's books each time they were paid out, right? [164]

A. Yes, sir.

Q. And when you record expenditures in your books, do you note down what expenditure, each expenditure is for?

MR. JACKSON: There is no evidence that this witness records any expenditures?

MR. BARTON: He just testified he did in the preceding question.

MR. JACKSON: I believe he testified earlier—

MR. BARTON: I will ask him again.

Q. (By Mr. Barton) Mr. Schilling, are expenditures recorded in the Company's books?

A. Expenditures are recorded in the Company's books.

MR. JACKSON: You are talking about the Company, not the Association?

MR. BARTON: The Company.

MR. JACKSON: I beg your pardon.

Q. (By Mr. Barton) And when these expenditures are recorded, is the nature of the expenditure recorded?

A. They are recorded—they are categorized, yes, sir.

Q. And is this—each expenditure labeled?

A. Pardon me?

Q. Is this expenditure labeled?

A. The Association expenses go under dues and memberships.

Q. And are these specified?

A. In a lump sum, yes, sir. [165]

Q. Do the companies belong to other associations?

A. Yes, sir.

Q. Which ones?

A. The bottling company?

TRIAL EXAMINER: Yes.

THE WITNESS: We belong to the National California Growers' Association.

The Northern California Growers' Association, pardon me.

Q. (By Mr. Barton) What are your dues to that Association?

A. I believe those dues are either two or four hundred dollars a year.

Q. What else?

A. Belong to the Northern California Valley Association.

Q. How much are those dues?

A. They vary.

Q. What is the range?

A. In the neighborhood of 40 to 50 dollars a month?

Q. What else?

A. The Pepsi-Cola Bottlers' Association, the national association.

Q. Any dues to that?

A. Yes, sir. And our dues to that are—I would have to check the records to be sure—but I believe our dues to that are in the neighborhood of $2,000 a year.

Q. What else? [166]

A. We belong to the California Pepsi-Cola Bottlers' Association.

Q. What dues do you pay there?

A. Our dues there are in the neighborhood of $750 a year.

Q. What else?

A. The California-Nevada Bottlers' Association.

Q. What dues then to them?

A. Our dues there are, I believe, approximately $400 a year.

Q. Anything else?

A. There is a list at the Chamber of Commerce of those if you are interested in all those, everything we belong to, sir.

Q. When you make out your payments and you make payments in the book, you mark down each payment as it goes out, right?

A. That is correct.

Q. And do you label it?

A. The check is made out to whoever it's payable to.

Q. In the book?

A. Yes, sir.

Q. Do you label who it is going to?

A. That is part of our book ledger.

Q. Incidentally, you said the assessments are based upon the number of trucks each bottler operates. When you convert or converted to distributorships, are distributors' trucks [167] counted?

A. These assessments were set back in 1962 or '63 and have never changed since that date.

Q. One company is not bigger than the other? Relatively it didn't matter?

A. That is correct.

Q. The same assessment.

Now, I guess these assessments have been taken a bit out of each of the other members; is that correct?

A. That is correct.

Q. Do any of them put up a squawk about the continuation of your legal expenses relating to this case?

A. No, sir.

Q. Did they ever try to persuade you to try to put an end to it?

A. No, sir.

Q. Did you advise Mr. Haley of your membership in the Bottling Association?

A. Mr. Haley asked me at one point what that check was for and I told him that was our membership in the Sacramento Bottlers' Association.

Q. When did he ask you that?

A. He said that was fine.

Q. I said: When did he ask you that?

A. Pardon? [168]

Q. When did he ask you that?

A. Probably a year ago.

Q. Did you ask him what the Association did? Did he ask you what the Association did?

A. No, sir.

Q. Incidentally, Mr. Schilling, you didn't have any conversations with Mr. Jackson during the last recess, did you?

A. Well, we both said we are going down to the end of the hall.

Q. Did you have any discussions with him?

A. No, sir.

Q. All you said was: You were going down to the end of the hall?

A. He said he was going to make a phone call.

Q. You didn't talk to him for any period of time?

A. No, sir.

MR. BARTON: I would offer at this time General Counsel's Exhibits No. 19, 20, 21(a) and (b), and 22 in evidence at this time.

TRIAL EXAMINER: Any objection?

MR. JACKSON: No objection.

TRIAL EXAMINER: They are received.

(The documents above referred to, heretofore marked General Counsel's Nos. 19, 20, 21(a) and (b) and 22 were received into evidence.) [169]

MR. BARTON: I have no further questions of Mr. Schilling.

MR. JACKSON: It is just noon, Mr. Trial Examiner.

I believe we probably should take the noon break at this time if that is convenient for the rest of you.

TRIAL EXAMINER: All right.

I don't care.

I just have one question: I might as well as it now.

MR. JACKSON: Surely.

TRIAL EXAMINER: It may lead to others.

Were you an officer of Golden State?

THE WITNESS: Yes, sir, I believe I was.

TRIAL EXAMINER: What office?

THE WITNESS: Secretary.

TRIAL EXAMINER: Secretary. What connection, if any, did you have with Golden State after the transfer, in this sale to All American?

THE WITNESS: No connection at all, sir.

TRIAL EXAMINER: When did you stop being an officer of the company?

THE WITNESS: At the transfer.

TRIAL EXAMINER: All right, we will adjourn for lunch until 1:00 p.m.

(Whereupon, the luncheon recess was taken, to reconvene at 1:00 p.m., same day.) [170]

AFTERNOON SESSION

1:00 p.m.

TRIAL EXAMINER PIPER: The hearing will be in order.

Whereupon,

EUGENE SCHILLING

was recalled as a witness by and on behalf of the General Counsel, having been first duly sworn, was examined and testified further as follows:

CROSS-EXAMINATION

Q. (By Mr. Jackson) Mr. Schilling, prior to the sale of the Sacramento Bottling operation to All American,—I will refer to All American rather than Sam Snead so we know what we are talking about—it's the same company—prior to the sale of the Pepsi-Cola Bottling operation to All American, were you an officer of Golden State?

A. Yes, sir.

Q. And at the time of this sale, what was your position in that respect?

A. At the time of the sale I was secretary of the Golden State.

Q. Did you own any stock in Golden State Bottling Company at that time?

A. No, sir.

Q. Did any member of your family, to your knowledge, ever own any stock in Golden State Bottling Company? [171]

A. No, sir.

Q. And at the time of the sale, did you continue or did your position as an officer of Golden State terminate?

A. It terminated at the sale, yes, sir.

Q. Have you at any time since that position held any—or since that date held any position whatsoever with Golden State Bottling Company?

A. No, sir.

Q. Or any member of your family, to your knowledge?

A. No, sir.

Q. At the time of the sale, was your employment by Golden State Bottling Company also terminated?

A. That is correct.

Q. And have you had any relationship of employment or business relationship with Golden State since the sale?

A. No, sir.

Q. Subsequent to the sale, did you become employed by All American?

A. I became employed by All American at the sale.

Q. In other words, your employment by Golden State ceased and your employment by All American commenced?

A. Yes.

Q. Is that correct.

Were you at that time made an officer of All American?

A. No, sir. [172]

Q. Have you ever been an officer of All American?

A. No, sir.

Q. Of the corporation, that is?

A. No, sir.

Q At the time of the sale, did you own any particular stock in All American?

A. No, sir.

Q. At the time of the sale, did you have an employment contract with All American?

A. No, sir.

Q. Under what circumstances, describe in your own words the circumstances under which your employment by All American came about.

A. I was asked by All American if I would continue on as general manager of the Pepsi-Cola Bottling Company of Sacramento, division of All American, at a specified salary. There was no work agreement or work contract at the time.

Q. Was anything said at that time about your employment being on a sort of a probationary or perhaps trial basis? And if things worked out, it would later be formalized or something to that effect?

A. They said: Let's get to know each other a little bit and see how you work with us and how we work with you, and if everything is satisfactory at a later date, we will draw up a work contract. [173]

Q. Was that later done?

A. Yes, sir.

Q. When was your employment contract with them, or when did you receive your employment contract from them?

A. In February '69.

Q. That would be a year following the sale?

A. The year following. [174]

* * *

Q. Now, inviting your attention, Mr. Schilling, to this—to certain exhibits that were shown to you by the General Counsel this morning, General Counsel's Exhibit Nos. 20, 21, 22, also General Counsel's Exhibit No. 19, 19 being a copy of a letter signed by you, addressed to the Clerk of the Court of Appeals, attaching a substitution of attorney, you may recall—

Perhaps it would be a good idea to have the actual documents.

TRIAL EXAMINER: He has got them. I gave them to him.

MR. JACKSON: Thank you.

Q. (By Mr. Jackson) I invite your attention to the fact that on the letter to Mr. Luck, which is General Counsel's 19, your signature appears. You appear to have signed on behalf of Golden State Bottling Company.

A. Yes, sir.

Q. Then referring to General Counsel's Exhibit 20—well, [177] 20 is a letter addressed to you by Mr. Dempster. It's addressed to you at Golden State Bottling. But referring particularly to 21(a) and 21(b), a notice to all employees, it appears that both are signed by you on behalf of Golden State Bottling Company.

A. That is correct.

Q. Did you at the time any of these exhibits were signed, did you actually have any authority to act on behalf of Golden State Bottling?

A. No, sir.

Q. And can you explain why it was that you signed on behalf or you purportedly signed on behalf of Golden State Bottling Company on those occasions?

MR. BARTON: Object to state of mind.

MR. JACKSON: I think he's perfectly entitled to explain why he signed the documents in that manner.

TRIAL EXAMINER: Objection overruled.

You may answer.

THE WITNESS: Mr. Jackson, I am not an attorney. All of these labor problems started under the name of Golden State Bottling Company, which to me is the Pepsi-Cola Bottling Company. These letters were prepared either by you or the National Labor Relations

Board; the contents of them I was aware of, I assumed that inasmuch as they were started against the Golden State Bottling Company they would be concluded [178] against the Golden State Bottling Company.

Frankly, I wasn't aware of the fact that I was signing Golden State Bottling Company, Inc., d/b/a Pepsi-Cola Bottling Company of Sacramento. As a matter of fact, on Exhibit G.C. 21(a), the bulletin which we posted on the bulletin board, that is, the "Employer's Golden State Bottling Company, Employer, d/b/a Pepsi-Cola."

I shouldn't say that. G.G. Schilling, President. I was referring to Gene G. Schilling, president of Pepsi-Cola Bottling Company, a division of All American Beverages. Frankly, I just—I wasn't aware of this.

Q. Well, prior to that a letter of transmittal to Mr. Luck, which is General Counsel's Exhibit No. 19—

Do you have that?

A. Yes, sir.

Q. Was that letter prepared by you?

A. No, sir.

Q. Do you know who prepared it?

A. I believe you did, sir.

Q. All right. Now, do you recall also at my request, Mr. Schilling, sending a letter of reinstatement or an offer of reinstatement to Mr. Baker on behalf of Pepsi-Cola Bottling Company?

A. Yes, sir.

Q. Did you do that at my request and upon my advice? [179]

A. Yes, sir.

MR. JACKSON: If your Honor please, I wish to have this marked as Respondent's—

TRIAL EXAMINER: All right, just mark it R-1.

MR. JACKSON: All right, R-1.

TRIAL EXAMINER: R-1.

(The document above referred to was marked Respondent's Exhibit No. 1 for identification.)

Q. (By Mr. Jackson) Mr. Schilling, I hand you a document which has been marked Respondent's Exhibit 1 and purports to be a copy, I take it, of a letter addressed to Kenneth L. Baker, dated [December]* 11, 1968 and signed "Pepsi-Cola Bottling Company, Gene G. Schilling, President."

A. That is correct.

Q. And I ask you if you can identify that for us?

A. I identify this letter.

Q. Is that the letter of reinstatement sent to Mr. Baker upon my request and upon my advice?

A. Yes, sir.

MR. JACKSON: We will offer Respondent's Exhibit 1, Mr. Trial Examiner.

MR. BARTON: No objection.

TRIAL EXAMINER: It may be received.

(The document above referred to, heretofore marked Respondent's Exhibit No. 1 for identification, was received into evidence.) [180]

Q. (By Mr. Jackson) Mr. Schilling, do you recall the first time you and I had any discussion concerning the fact that the bottling company had been sold to All American Beverage Company?

A. I believe I do, sir.

Q. And do you recall when that occurred?

A. I believe it was early in December.

Q. 1969?

A. Yes.

Q. And was that the first time that you advised me that the Pepsi-Cola operation had been sold to Golden State to All American?

A. That is correct, sir.

Q. Mr. Schilling, with respect to the representation of Pepsi-Cola during the course of the unfair labor practice proceedings that commenced during the spring or summer of 1963, who was the attorney that represented Pepsi-Cola during the initial stages of that proceeding?

A. His name was Edward Franzen, F-r-a-n-z-e-n.

Q. And do you recall at what stage of the proceedings I came into the picture?

A. It was a considerably later date. I don't recall exactly when.

Q. Approximately when, Mr. Schilling, was the Sacramento Bottlers' Association first formed? [181]

A. I think probably in the neighborhood of 1960. [182]

* * *

THE WITNESS: No. I represented the Pepsi-Cola Bottling Company in that Association.

TRIAL EXAMINER: And have since when?

THE WITNESS: Since its inception.

TRIAL EXAMINER: Oh, I think that is adequate foundation.

Q. (By Mr. Jackson) As a matter of fact, Mr. Schilling, you were among the persons who founded the Association, were you not?

A. Correct.

Q. And you participated in the discussions with the other bottlers in town which led to its inception?

A. That is correct.

Q. And it was among the consequence of those discussions the purposes were formulated and the organization itself came into being; is that correct?

A. Correct.

Q. All right, now, continuing on, of course those continued to be the general purposes of the Association, or has there been some change in them?

A. Those are the general purposes of our discussions. We [183] discuss our problems. Whatever problems arise, we discuss at the meetings.

Q. And do matters of labor relations and industrial relations also form part of that general context of discussion?

A. Yes, they do. [184]

* * *

REDIRECT EXAMINATION

Q. (By Mr. Barton) Mr. Schilling, in response to a question from Mr. Jackson you testified that your first discussion with him regarding the sale of the bottling plant occurred in early December of 1969. Do you recall that testimony?

A. Yes, sir.

Q. What occasioned that sudden release of informaton?

A. I was gone from the plant during the month of November and at that time, during my absence from the plant, Mr. Jackson somehow was informed of the All American Beverages becoming the owner of Pepsi-Cola Bottling Company.

Q. He didn't get information from you in the first instance; is that right?

A. No, sir. [187]

* * *

Whereupon,

LEONARD WILLEFORD

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Barton) Will you spell your full name for the record, please, Mr. Willeford.

A. Leonard Willeford, W-i-l-l-e-f-o-r-d.

Q. What is your present address?

A. 6001 Valley Way, Sacramento.

Q. And your present occupation?

A. I work for the Skylon Corporation.

Q. Have you ever worked for Pepsi-Cola Bottling Company of Sacramento?

A. Yes.

Q. When to when?

A. Early summer of 1962 to October 1965.

Q. What position were you in when you started with Pepsi-Cola?

A. Driver-salesman.

Q. How long did you retain that position?

A. As a driver-salesman, until October of 1964.

Q. And then was—what was your status then?

A. From October 1964 to October 1965 I was an independent [194] distributor for the Golden State Bottling Company.

Q. And what was the reason for your eventual termination?

A. I was fired.

Q. Was there a reason given?

A. I wasn't taking care of any accounts; I was skipping stops and wasn't giving them the service I was supposed to.

Q. In your opinion, were these allegations correct?

A. No, sir.

TRIAL EXAMINER: Do you know who fired you?

THE WITNESS: Mr. Gene Schilling.

Q. (By Mr. Barton) Before beginning as a distributor, Mr. Willeford, do you recall a meeting in which a decision to convert to distributorships was announced?

A. I recall the meeting but not exactly what time or date it occurred.

Q. What is your best recollection as to when it was in relation to the time you began as a distributor?

TRIAL EXAMINER: Before, he means.

THE WITNESS: Oh, approximately a week or two. Maybe three.

Q. (By Mr. Barton) Before or after?

A. Before I became a distributor.

Q. And where was this meeting?

A. It was held at the Pepsi-Cola Bottling Company at 1100 "Q" Street, Sacramento. [195]

MR. JACKSON: I'm sorry, I didn't hear the answer.

THE WITNESS: [11]* "Q" Street.

TRIAL EXAMINER: The meeting was held at the Pepsi-Cola Bottling Company at 11 "Q" Street, Sacramento.

Q. (By Mr. Barton) What location within the plant?

A. In one of the offices, main offices.

Q. And who was present on that occasion?

A. The driver-salesmen, the route supervisors.

Q. Who were they?

TRIAL EXAMINER: You mean names?

MR. BARTON: Yes.

THE WITNESS: Henry Miller was one of the supervisors, Donald Glavich, Ed Varesconi.

Q. (By Mr. Barton) Who else was present?

A. Mr. Gene Schilling, Dwight Smith.

Q. Who is Dwight Smith?

A. He was then, I believe he was market coordinator for the Pepsi-Cola Bottling Company.

Q. Anybody else present that you recall?
A. No, sir.
Q. Do you recall what was said on that occasion and by whom?
A. The meeting was called to discuss a possible changing of the routes and developing them into distributorships.
Q. Was this announced?
A Yes. [196]
Q. By whom?
A. Mr. Gene Schilling.
Q. What else was said?
A. He said that some of the routes were going to be made into distibutorships and that anybody wishing to have a distributorship would please contact him after the meeting was over and that he would set up appointments to talk to them about this, that some of the routes would not become distributorships because their case sales weren't large enough to allow this, so if you didn't want to become a distributor, you could still work for the Pepsi-Cola Company as a regular driver, salesman.

But the men on the routes at the present time had first choice as to whether they wanted to become a distributor or not. If they did not, they could resume their job as a driver-salesman, possibly being switched to another route.
Q. Do you recall anything further that was said?
A. There was a lot of discussion but that's the main thing that I remember.

TRIAL EXAMINER: Was there anything said about compensation? How much you would make?

THE WITNESS: Well—

TRIAL EXAMINER: What was said? What do you recall, I mean?

THE WITNESS: That we would make 30 cents a case. [197]

TRIAL EXAMINER: I mean, compared to what you were making as a driver-salesman.

THE WITNESS: Considerably more. We had a chance to make considerably more as our own individual distributors.

TRIAL EXAMINER: It was so stated?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: By whom?

THE WITNESS: Gene Schilling.

TRIAL EXAMINER: Go ahead, Mr. Barton.

Q. (By Mr. Barton) After this meeting, were you at any time offered a distributorship, Mr. Willeford?

A. As soon as the meeting was over, a bunch of us walked up to Mr. Schilling and made appointments to talk to him about distributorships and told him we were interested in them and subsequent appointments were set up.

TRIAL EXAMINER: One by one, individually?

THE WITNESS: Yes.

Q. (By Mr. Barton) Did you have an appointment?

A. Yes, sir, I did.

Q. How long after the meeting was this appointment?

A. As close as I can recall it might have been two or three days later, or possibly a week later.

Q. And where was this meeting held?

A. In Gene Schilling's office at the Pepsi-Cola Company.

Q. Who was present? [198]

A. Gene Schilling and I.

Q. What was said in that meeting?

A. He went over the route that I would have, the area it would cover, how much commission I would

make off each case or how much I would make off each case. Basically that's what we went over. The contract, the reading of the contract—I had to read the contract completely through.

Q. Was the written contract there?

A. Yes, sir, it was.

Q. Was the contract signed on that occasion?

A. Yes, it was.

Q. Now, to what extent, if any, did the route which you had as a distributor change from that which you had as a driver-salesman?

A. A few stops were added in order to build the route up so the sales would be adequate for compensation for a distributor.

Q. Approximately how many stops were added?

A. To the best of my knowledge, there was three or four stops added to the route that I had at the time.

Q. And how many stops did you have altogether?

A. Approximately 30 or 35 stops.

MR. JACKSON: That is before or after?

Q. (By Mr. Barton) Before or after?

TRIAL EXAMINER: Before or after you became a distributor?

THE WITNESS: Before I became a distributor I had 30 or [199] 35 stops.

Q. (By Mr. Barton) To which two or three were added?

A. Two or three volume stops were added.

MR. JACKSON: The testimony was three or four.

TRIAL EXAMINER: Volume stops—that is different from other stops?

THE WITNESS: Yes, sir, it is.

TRIAL EXAMINER: Bigger sales?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: More sales?

THE WITNESS: Yes, sir.

Q. (By Mr. Barton) Do you have knowledge as to which driver-salesman had the [route]* that you had as a driver-salesman before you had it?

A. Yes sir, I do.

Q. Who was that?

A. Ken Baker.

Q. Now, at the time that you took over this route, did you have any discussions with Mr. Gene Schilling regarding your capabilities in handling that route?

A. Yes, sir, I did.

Q. When was that to the best of your recollection?

A. The best of my knowledge, it was two or three weeks—it might have been more—after Ken Baker was fired.

Q. And where was this discussion? [200]

A. At the Pepsi-Cola Bottling Company.

Q. What location?

A. 1100 "Q" Street.

Q. What location in the plant?

A. Mr. Schilling's office, to the best of my knowledge. It could have been in the sales room.

Q. Was anybody else present that you recall?

A. No.

Q. What was said on that occasion?

A. He asked me if I thought I could handle a route because it was a much larger route than the one I had been accustomed to. The route I had had small stops on it for the same company.

TRIAL EXAMINER: You changed routes after Baker was fired?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Go ahead.

THE WITNESS: I had a small route. It was a downtown route and it was a small volume route and I wanted a bigger volume route. And Gene asked me if I thought I could handle it because it was a bigger route and he also told me if he did agree on giving me this route, I would have to do a lot of hustling because Ken, he did a good job on his route, on the route when he was on it. I would have to do some hustling to keep up with what he did.

Q. (By Mr. Barton) Do you recall anything further of that [201] conversation?

A. No, I just agreed to that, that I would take the route.

Q. Now, Mr. Willeford, will you—were you present on the occasion in '63 when the men left the plant?

A. Yes, sir, I was.

Q. Were you one of the ones that left?

A. Yes, sir.

Q. Do you recall whether or not Mr. E. J. Crofoot, Sr. was present at any time during that day?

A. He was. He wasn't there when we walked out.

Q. When was he there?

A. After we walked out, he arrived.

Q. Did you see him arrive?

A. Yes, sir, I did.

Q. Where did you see him?

A. We was out in front of the Pepsi-Cola Bottling Company when he arrived.

Q. Did you see him go through the door?

A. Yes, sir, I did.

MR. BARTON: I have no further questions. [202]

* * *

TRIAL EXAMINER: I believe you stated that Mr. Baker's [205] route was much larger than the one you had been on prior to that time.

THE WITNESS: Yes, sir, it was.

Q. (By Mr. Jackson) As a matter of fact, Baker's route was one of the larger there at the plant at that time, was it not, or one of the larger ones, let's say?

A. Yes, sir.

Q. Mr. Willeford, on the route that you had run prior to the time you switched over to Mr. Baker's route, did you earn commissions?

A. Yes, sir.

Q. And as compared with that, did you experience an extra—an increase in commissions after you took over Mr. Baker's route?

A. Yes, sir.

Q. On the larger route?

A. Yes, sir. [206]

* * *

Whereupon,

DONALD MRAULE

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Barton) Would you spell your full name for the record, please.

A. Donald J. Mraule, M-r-a-u-l-e.

Q. What is your present address, Mr. Mraule?

A. 3606 Rong Way.

Q. Is that Sacramento?

A. Yes.

Q. What is your present occupation?

A. I am a driver with the John Bruner Company.

Q. Have you ever worked for Pepsi-Cola Bottling Company in Sacramento?

A. Yes, sir, I did.

Q. When to when?

A. From March 1962 into November of 1964.

Q. And in what position were you employed during that period?

A. Driver-salesman.

Q. For that whole period?

A. Yes, sir.

Q. And what was the reason for your leaving Pepsi-Cola? [207]

A. I was fired from there, and primarily through labor reasons. But the reason was given for my termination—they said it basically was attitude and because of failure to serve customers.

Q. Before your termination do you recall being present at a meeting at which it was announced that the Company was going to convert some routes to distributorships?

A. Yes, I was.

Q. And how long before your termination was that?

A. Approximately a month or month and a half before my termination. The meeting was mainly—it was held in October; sometime in October; I was terminated in November.

Q. Where was this meeting?

A. At one of the meeting rooms at the Pepsi-Cola Bottling Company.

Q. Do you recall who was present?

A. Yes, I do.

Q. Mr. Schilling was heading the meeting, was he not?

A. Yes. Well, the supervisors, Mr. Miller, Mr. Graff and Mr. Virg Conner and the driver-salesmen, plus Dwight Smith.

Q. Will you tell us, please, what was said on that occasion?

A. The meeting was pertaining to setting up distributorships, stating that majorities of the routes would be going on a distributorship basis.

Q. Who was speaking? [208]

A. Mr. Schilling was.

And that there would be a small number of routes retained as Company-operated, possibly three routes. During the course of the meeting it was stated that there would be a case payoff at 30 cents a case and that all of the routes would be more or less equalized, the ones that were on distributorships, so they would have about equal earning power. It was also brought up in the meeting about the expenses involved, such as truck expenses.

At the time they had a [pilot]* route going on this distributorship and these figures were brought forth from this pilot route and Mr. Thorne happened to be the driver-salesman on this pilot route and he eventually, he set up his route, cases, volume stops for taking off two of the routes that I know of and adding two to Mr. Thorne's route in order to build his route up so that the figures would come out showing good volume.

Also, Mr. Schilling stated at this meeting that the salesmen would be called in at a later date, they could make appointments to see him if they would want to have their routes as distributors.

Q. Do you recall anything further that was said?

A. No, I don't believe so.

Q. Did he mention anything about what would happen to a man who did not prefer to take his route as a distributorship? [209]

A. He said he would remain on with the Company and would be given a route as a Company driver rather than owning his own distributorship, but there would be someone who might want to take his route as a distributorship and the man in his present capacity would still stay in the Pepsi-Cola employment.

Q. Do you recall anything further?

A. No, that was about all I recall.

Q. After that meeting were you ever offered a distributorship?

A. Yes, I was.

Q. How long?

A. About, oh, a week or two later.

Q. And where did this happen?

A. In one of the back offices. I don't recall. It was in Mr. Schilling's office.

Q. And who was present?

A. Mr. Schilling and myself.

Q. And what was said on that occasion?

A. He stated that my route was going to be open for distributorship. He asked me if I would be willing to take the route, went over the totals of the route as to the operation of the distributorship, how it would work out, what my expenses would be pertaining to truck expenses, business license, accounting fees; if I had my own account for the route.

Q. What was your response? [210]

A. I rejected his offer.

Q. Can you remember anything else that was said at that meeting?

A. No. He let me go. He said that the route quite possibly would still be open for distributorship.

Q. [Did you tell him]* why you didn't want the distributorship?

A. Yes, I can. I told him if I was to take the route and pay my own business license and everything I would sort of like to run the route as I saw fit, still holding to Company policy on the route, and in the meantime—before my route was open for distributorship, I had had certain cuts in my route. I was given a new area which I didn't feel was a very good area for a distributorship, a lot of so-called "Mom and Pop" stores, in that area. And the good portion of my route was taken from me and given to Mr. Thorne.

TRIAL EXAMINER: Before this conversation?

THE WITNESS: Yes.

TRIAL EXAMINER: By Mr. Schilling?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Did he suggest that you be given other accounts? Volume accounts?

THE WITNESS: During the course of the first meeting we had, he said that all routes would be set up on an equal basis.

TRIAL EXAMINER: I mean in the meeting with you personally.

THE WITNESS: My personal meeting? [211]

TRIAL EXAMINER: Yes.

THE WITNESS: He said possibly my route would be added to, yes, but I just didn't feel that I wanted to take the route that I had had with the latest changes I had in it with all the Mom and Pop stores and that I would rather have my original route back, the portion that was taken from me and given to Mr. Thorne.

TRIAL EXAMINER: Go ahead.

MR. BARTON: I have no further questions.

MR. JACKSON: May I be excused for just one moment?

TRIAL EXAMINER: How long after this conversation were you terminated?

THE WITNESS: And again, it was approximately two weeks after this conversation. Approximately a week to two weeks later. [212]

* * *

TRIAL EXAMINER: At the meeting where Mr. Schilling explained to all of you about the new plan for distributors, or at the meeting that you had with him personally about being a distributor, was there any discussion by him concerning what net earnings as a distributor would be in comparison with what you were paid as a driver?

THE WITNESS: The figure, as far as I can recall, wasn't derived at.

Q. (By Trial Examiner) I am not asking for a figure.

A. He said it would be a considerable increase.

Q. As a distributor?

A. Yes, over being just a driver-salesman with the Company.

Q. And, of course, you knew what you were making as a driver-salesman?

A. Yes.

Q. Approximately what was that?

A. I believe right around $65 to $6800.

Q. A year?

A. Yearly. [220]

* * *

MYRL MCHANN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Barton) Would you spell your name for the record, please, Mr. McHann?

A. Myrl McHann, M-c-H-a-n-n.

Q. How do you spell your first name?
A. M-y-r-e-l.
Q. What is your present address?
A. Home address, 6924 Wild Rose Way, Sacramento.
Q. What is your present occupation?
A. Distributor for Coca-Cola Bottling Company of Sacramento.
Q. Have you ever been employed by Pepsi-Cola Bottling Company of Sacramento?
A. Yes, I was.
Q. When did you start?

MR. JACKSON: Could you keep your voice up, Mr. McHann, [221] we have a little trouble hearing.

THE WITNESS: I was employed as a route salesman from November or October—or November of '64 to—

Q. (By Mr. Barton) And as a driver-salesman?
A. As a route salesman, yes.

TRIAL EXAMINER: For the first time?

THE WITNESS: At the employment time, yes.

TRIAL EXAMINER: No, I mean was that your first employment with Golden State?

THE WITNESS: Yes.

Q. (By Mr. Barton; I am not talking about when you became a distributor.
A. No, that was when I was first employed that I was employed as a route salesman.

TRIAL EXAMINER: Were you a salesman for some time before you—

THE WITNESS: Not for Golden State, no.

TRIAL EXAMINER: Before they put in the distributorship?

THE WITNESS: I was a salesman for Golden State Bottling Company as a route salesman, then concurrently I became a distributor.

TRIAL EXAMINER: At the same time?

THE WITNESS: No, sir, at a later date.

Q. (By Mr. Barton) How long after you started as a driver-salesman did you become a distributor? [222]

A. I became a distributor in January of 1965, so it would be a year or a little over.

Q. So you started as a distributor in January of '65 and you started as a driver-salesman a little over a year before that?

A. Yes.

Q. And when did you cease being a distributor?

A. December of 1968.

Q. After you became a distributor, were you required to pay dues to the PCBC, Inc.?

A. Are you relating to the Company Association? Our Company Association?

Q. Yes.

A. As a distributor, no.

Q. Before becoming a distributor, Mr. McHann, do you recall being present at a meeting at which the Company's decision to rate the distributorship was—

A. Yes, I do.

Q. About how long before you actually became a distributor, was this meeting which was announced?

A. I didn't become a distributor until the following January of '65 and to my recollection the meeting was held about the second [week]*—I think the second or third week of October, 1964.

Q. Where was this meeting? [223]

A. It was held in our general sales meeting room.

Q. And who was present?

A. All personnel involved in sales, supervisory, up to general manager.

Q. Tell us what was said on that occasion and by whom?

A. Mr. Gene Schilling was in charge of the meeting and he came and told us in regard to going into a distributorship that they had piloted Don Thorne as a distributor, as a self-employed distributor and that eventually all routes that were available or feasible to operate as a distributorship would become self-employed distributors, and the Company would retain those routes themselves which could not feasibly operated as such. And he did, Mr. Schilling mentioned that if we were interested that we could contact him and make an appointment to see him regarding the distributorship of each person and at that time, some did so and as following days went by, other people asked to see him in regard to the distributorship thing.

Q. Do you recall anything further that was said at the meeting?

A. Well, he said not to get panicky, that we wouldn't lose our jobs because of this distributorship thing, that we would still be in the employment of Pepsi-Cola.

Q. Do you recall anything further?

A. No, sir. [224]

Q. Do you recall him mentioning who had first chance at any route which was converted?

A. The way he told us, it was assumed the person that was on the route that became a distributor would have the first opportunity to take it as a distributor.

Q. Did he say that?

A. Not in those direct words, but that was the assumption.

Q. Did he say that in that regard?

A. Well, in—once my route was to become a distributor that I would have an opportunity to take it as a distributor.

Q. Did he say that at that meeting?

A. Not to myself, no.

Q. What did he say?

A. Mr. Schilling said that the routes as they were derived at, or broken into, as a distributor, the gentleman that had the route at that time would have the first opportunity to become a distributor on that certain route, and if the gentleman didn't want it, well, he wouldn't have to take it and he could become a route salesman or stay a route salesman with the Company.

Q. Do you recall anything further that was said on that occasion?

A. Not, other than just having the meeting with Mr. Schilling about it, if you were interested.

Q. Did you subsequently meet with Mr. Schilling? [225]

A. Yes, I did.

Q. How long after that meeting was that?

A. The first time I talked to Mr. Schilling about it was about the end of November, I believe.

Q. Where was this meeting?

A. Mr. Schilling's office.

Q. And what was said on that occasion?

A. I approached Mr. Schilling in regard to becoming a self-employed distributor on a route—not pertaining to the one I had at the time—and it was to my knowledge that the gentleman who had the route at that time was going to terminate his employment with Pepsi-Cola and that I asked for this gentleman's area as a distributor.

At that time Mr. Schilling said there was no reason why I shouldn't have it as a distributorship.

Q. Which gentleman's route was it that you are referring to?

A. Prior to me taking over the route as a route salesman, I took it over from Vic Helmer.

MR. JACKSON: I'm sorry, I didn't get the name.

THE WITNESS: Vic Helmer.

Q. (By Mr. Barton) What route did you have before starting as a salesman?

A. A city route as a salesman.

Q. Was that a high or low volume route?

A. It was considered one of the lower volume routes.

[226] * * *

(Examination by Barton)

Whereupon,

KENNETH BAKER

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Baker) Will you spell your name for the record, please, Mr. Baker.

A. B-a-k-e-r. Kenneth L. Baker.

Q. And your address?

A. 6633 Dobson Way, Sacramento.

Q. Are you the same Kenneth Baker who was terminated from Pepsi-Cola Bottling Company August 16, 1963?

A. Yes, sir.

Q. Have you been in the hearing during this proceeding?

A. Yes, sir.

Q. If you had not been terminated by Pepsi-Cola and a distributorship opportunity had been offered to you, would you have accepted it or rejected it?

A. Accepted it.

Q. Following your termination by Pepsi-Cola, were you able to secure employment?

A. After a certain lapse of time, yes.

Q. With whom?
A. Zellerbach Paper Company. [231]
Q. How long were you unemployed?
A. About two weeks.
Q. During that time, did you seek employment with other employers?
A. Yes, sir.
Q. How many did you contact at that period?
A. About 12 or 14 employers, if not more.
Q. How did you contact them?
A. Personally.
Q. What means of transportation?
A. My car.
Q. What's your best degree of estimation of the miles you traveled in making these contacts?
A. About 250 miles.
Q. Are you presently employed at Zellerbach?
A. Yes, I am.
Q. During your period of employment at Zellerbach, how have you gotten to work?
A. My own vehicle, sir.
Q. How did you get to work at Pepsi-Cola.
A. My own vehicle.
Q. Is the distance to Zellerbach greater than, equal to, or less than the distance to Pepsi-Cola?
A. Greater.
Q. What is your best estimate of how much greater that is? [232]
A. In a round trip estimate, 4.8 miles.
Q. How did you derive at that estimate?
A. I checked it with my speedometer.
MR. JACKSON: What was that difference?
MR. BARTON: 4.8.

Q. (By Mr. Barton) Is that your speedometer in your car?

A. Yes.

Q. Now, during your period of time, employment at Zellerbach, have you been required to become a member of any unions?

A. Yes, sir, I was forced to join the Teamsters' Union.

MR. BARTON: I am now marking for identification, General Counsel's 23 for identification, a document which purports to be a letter addressed to Kenneth L. Baker, signed by Carl J. Olson.

(The document above referred to was marked General Counsel's No. 23 for identification.)

Q. (By Mr. Barton) I show you G.C. 23 for identification and ask if you have ever seen that document before.

A. Yes, sir.

TRIAL EXAMINER: Did you give me the date?

MR. BARTON: No, sir; February 27, 1964.

Q. (By Mr. Barton) Did you receive that in the mail?

A. Yes, sir.

Q. And I note that that letter indicates that you were to tender Local 150 of the Teamsters' the sum of $85 in excess [233] of a sum of $1850 already tendered. Did you tender the $85?

A. Yes, sir.

Q. [How?]*

A. Check.

Q. Had you previously paid the $1650 as recited in that letter?

A. Yes, sir.

Q. How?

A. By check, too.

MR. JACKSON: May we have a continuing objection to relevancy on this and the mileage, too?

MR. BARTON: It is his expense.

TRIAL EXAMINER: If you wish a continuing objection, yes.

MR. JACKSON: We don't believe these are proper items.

MR. BARTON: Very well.

Q. (By Mr. Barton) Now, after receiving this letter, did you tender monthly dues, payments to Local 150?

A. Yes, sir.

Q. In what amount?

A. $6.50.

Q. Monthly?

A. Yes, sir.

Q. Was that the amount of dues you paid throughout the period of your employment, to the present time?

A. No, sir. In October of 1966 the dues went up to $7.50. [234]

MR. BARTON: I would offer G.C. 23 at this time.

TRIAL EXAMINER: Objection?

MR. JACKSON: No.

TRIAL EXAMINER: It may be received.

(The document above referred to, heretofore marked G.C. 23 for identification, was received at evidence.)

MR. JACKSON: Except the general objection we have already indicated.

MR. BARTON: Nothing further.

Let me put one more question to him.

Q. (By Mr. Barton) How many days a week are you required to work?

A. Five days.

Q. And has that been true throughout the tenure of your employment?

A. Yes, sir.

Q. How many days a week were you required to work at Pepsi-Cola?

A. Five days.

Q. Was that true at the time of your termination?

A. Yes, sir.

MR. BARTON: That's all.

TRIAL EXAMINER: In Appendix A—D—it shows—did you change Appendix D? I see the original. [235]

MR. BARTON: No, sir.

TRIAL EXAMINER: Okay.

MR. BARTON: I am aware insofar as . . . I believe it's the fourth quarter of '63.

TRIAL EXAMINER: That's the very thing I was going to ask you.

MR. BARTON: Inasmuch as our totals indicate no backpay owing for that time, we don't desire—we don't need to put in any evidence of expenses.

TRIAL EXAMINER: The interim earnings exceeded—

MR. BARTON: Yes.

TRIAL EXAMINER:—exceeded what he would have—oh, okay. That answers my question.

CROSS-EXAMINATION

Q. (By Mr. Jackson) Mr. Baker, when you went to work for Zellerbach you were paid for your employment there?

A. Yes, sir.

Q. What was the nature of your position when you first went to work for them?

A. I was a delivery man.

Q. And you say you went to work for them approximately two weeks after you left Pepsi-Cola?
A. Yes, sir.
Q. You have been employed there continuously since?
A. Yes, sir. [236]
Q. There has been no break as far as going to work for some other—
A. I did have one break that I was laid off from Zellerbach but I did get hired back by them and have worked there since then.
Q. Except for one layoff you have worked continuously since the time you first went to work for them?
A. Excluding the strikes, sir or something like sickness.
Q. When were you laid off?
A. The day before Thanksgiving in 1963.
Q. Approximately when was that? How long was that?
A. That was four . . . counting Saturday and Sunday, that was four, five days.
Q. A five-day layoff?
A. I was laid off there indefinitely then, but I mean there was a lapse before I found another job with another company.
Q. You were laid off the day before Thanksgiving and then you went to work again the following Tuesday, right?
A. Monday.
Q. So you only really missed one workday, correct?
A. Actually I didn't get paid because I got laid off the day before Thanksgiving and Zellerbach didn't pay me for Thanksgiving.
Q. Where did you go to work then on the following workday, Monday? [237]

Withdraw that.

It was the day before Thanksgiving, 1963, that you were laid off?

A. Yes.

Q. Where was it then, that you started to work the following Monday?

A. LaVetti Wine.

Q. What was the nature of your employment there?

A. Delivery man.

Q. Was that pretty much the same type of job you had at Zellerbach?

A. Yes. Delivering wine to grocery stores.

Q. How long did you work for LaVetti Brothers?

A. One week.

Q. Then did you go directly back to Zellerbach?

A. Yes, sir.

Q. Then you have been employed there continuously?

A. Yes, sir.

Q. What was the rate of pay you were earning when you were first hired by Zellerbach?

A. I don't recall exactly—I started out I think first at kind of a partial pay, not the full pay scale. Then it went up to a 118 or something like that a week.

Q. 118 per week?

A. Something like that. [238]

Q. On what basis were you paid?

A. By the hour.

Q. And that averaged about $118 per week?

A. Yes, sir.

Q. Was that your takehome pay or gross pay?

A. We do have overtime, too, but I don't recall.

That was the gross, actually, before takehome, what I just mentioned.

Q. With or without overtime?

A. Without.

Q. And did you work on the average of some overtime every week?

A. I couldn't say. It's been a long time ago.

Q. Were you paid at that same rate and on that same basis when you were laid off that November at Thanksgiving?

A. Yes, sir.

Q. When you were rehired at Zellerbach, was it at the same rate or at the same base again?

A. I think so.

Q. Do I understand you did not have a permanent assignment at the time you were first hired?

A. No, sir. I wasn't permanently an employee.

Q. In December you returned?

A. Around the first of December.

Q. The early part of December, you returned to work permanently [239] for them?

A. Yes.

Q. When you returned to work at that time following the layoff did you go back to work as a permanent employee?

A. For Zellerbach, yes, sir.

Q. No change in pay or basis of your pay?

A. Right.

Q. During the time you worked for LaVetti Brothers, that one week, what were you paid for that?

A. I don't recall. Must be just around in that same area.

Q. Did you have some income from Teamsters Local 150 during that period?

A. Possibly. I was picketing. Distributing leaflets and so forth for them.

Q. Were you paid for that?

A. Yes, sir.

Q. How much were you paid.
A. I think it was $2.00 an hour.
Q. Do you recall how much you earned altogether?
A. I couldn't tell you that.
Q. Over a hundred?
A. That I couldn't tell you, sir.
Q. Is your position with Zellerbach at the present time the same as it was when you went back after the layoff?
A. Yes, sir. [240]
Q. Same general position?
A. Yes, sir.
Q. Has your compensation been changed or increased since then?
A. Yes. My pay has raised as contracts have come up and we have—the Teamsters negotiated and they put in a contract. Ever so often our pay, we have raises, yes, sir.
Q. Do you recall when the first raise was?
A. No, sir. There's one every six months to a year.
Q. And are you still employed on an hourly basis?
A. Yes, I am.
Q. The following decision in your case here by the Court of Appeals, did you confer with Mr. Dempster at the Labor Board regarding the amount of your earnings during this interval?
A. I did.
Q. What did you furnish him in regard to evidence as to what you had earned during this period?
A. A form to fill out that I did and I would mail back to Mr. Dempster for my expenses and wages, union dues, so forth.
Q. Did you or he communicate with them, to ascertain from your employers' records what you had been paid during this interval?

A. I checked—I went to Zellerbach and asked for a certain document of my wages.

MR. BARTON: It might help, your Honor, I would offer [241] the stipulation that our staff checked not only with the employers but the Social Security Administration to verify these figures.

TRIAL EXAMINER: All right.

MR. BARTON: I don't know if that answers the question or not.

Q. (By Mr. Jackson) You did obtain some pay records from your employer?

A. Yes, sir.

Q. Did you turn those over to Mr. Dempster?

A. Yes, sir.

Q. Did he make some computation to indicate the totals of your earnings?

A. Possibly. I don't recall.

Q. Did you review with him the results of the computations?

A. Possibly. I know over the phone there have been a few discussions between Mr. Dempster and myself, but I couldn't recall now.

Q. I will show you a document that has been attached to the supplemental pay specifications in your case here, entitled "Appendix D" and subtitled "Baker's Net Interim Earnings," rounded to the closest dollar amount and will ask you to go over that for the period indicated.

So far as you can tell are those figures you gave to Mr. Dempster, the figures regarding your own earnings? [242]

A. I couldn't say. The figures aren't fresh in my mind what I have given him over the last several years.

Q. Have you seen Appendix D before?

A. Yes, sir.

Q. Before, was it correct?
A. That I don't know.
Q. So far as you are right, I asked you to look at these figures.
A. So far as I'm aware these are the proper figures.
Q. Are you aware and I will ask you in that case, to look it over rather carefully and tell me if it does not correctly reflect what it purports to reflect, namely, your earnings and claimed expenses during this interval?
A. No, sir.
Q. The entire Appendix D?
A. Yes, except for the stipulations—changes—that 200.
Q. That one typographical error?
A. Yes.
Q. A proper reflection of what it purports to reflect?
A. Yes, sir.
Q. Mr. Baker, this [Appendix]* D—it ends with the one quarter of 1969. Has your pay changed at any time since June of '69?
A. I don't recall.
Q. What's your takehome pay at the moment?
A. It varies, with the overtime. With the busy season or [243] the slack season—various things enter into that.
Q. When is the busy season?
A. Just before Christmas.
Q. September, for the busy season, what does your pay average per week, including overtime?
A. I couldn't put a specific figure on it.
Q. About?
A. Anywhere from $160 a week to $200 a week. In a variance in there.

TRIAL EXAMINER: This is takehome?

THE WITNESS: No, gross pay.

Q. (By Mr. Jackson) It varies from 160 to 200? What occasion the variance overtime?

A. Yes, sir.

Q. This is not through the busy season?

A. No, sir.

TRIAL EXAMINER: What is your base pay currently?

THE WITNESS: I think is $160 a week. We're paid every two weeks, $321.

Q. (By Mr. Jackson) What is the range during the busy season?

A. Say between $180 to $220.

Q. Do you have any other sources of income in your own work?

A. Not at the present time.

Q. Have you in the past? [244]

A. Yes, sir.

Q. What?

A. Pacific Maritime Association, which is the Port of Sacramento. I worked there when we were on strike in 1967, the second quarter of 1967. In the second quarter of '67 I went to the PMA approximately two times a day, seven days a week. They work Saturdays.

Q. Did you stay all the way through?

A. No, sir, we were on strike in 1964, the third quarter of '64—July—the truckdrivers—we went out on strike.

Q. Did you work during that time?

A. I pulled picket duty at Zellerbach every day but then it was only four hours and then after that, I'd go out and seek work elsewhere, other trucking outfits, lumping jobs and all.

Q. Those are the ones that are indicated in Schedule B?

Interstate Motor Lines, Southern California Freight, Arrow Trucking, and so forth?

A. Yes, sir.

Q. Again referring to the period when you mentioned, '67, . . . yes.

A. The second quarter.

Q. Is that figure reflected in Schedule D for that period?

A. Yes, sir.

Q. Were there any other time periods?

A. No, sir. [245]

Q. In 1965, the first quarter, you had some earnings from Southern California Freight Lines.

A. Yes, sir. After hours from Zellerbach.

Q. Moonlighting, kind of?

A. Yes, sir

Q. That is reflected in the Schedule B that we're speaking of?

A. Yes, sir.

MR. JACKSON: I think that's all. Thank you, Mr. Baker.

TRIAL EXAMINER: Wait a minute.

Any redirect?

MR. BARTON: Yes, sir.

REDIRECT EXAMINATION

Q. (By Mr. Barton) During the period of the quarter of '64 when you were on strike and working for other employers, what location were you working for Interstate Motor Lines?

A. At their plant on 55 First Avenue.

Q. How many days?

A. I don't recall.

Q. How far is that location from your residence?
A. Probably . . . approximately five miles round trip.
Q. Did you drive?
A. Yes, sir.
Q. When you worked for Southern California Freight Lines, Owen C.—ONC Fast Freight—where did you work then?
A. That was also in the south area. On 52nd Avenue. [246]
Q. How many days were you there?
A. For them, . . .
I don't recall. Maybe one, two days.
Q. How far away was that?
A. Approximately five miles round trip.
Q. Arrow Trucking—where did you work for them?
A. That was lumping jobs. That was out from my house to Burke-McDowell Warehouse. About eight miles round trip.
Q. DiSalva?
A. That was lumping jobs, too. They were over there at the Rice Growers' Association in West Sacramento unloading rice.
Q. How far was that?
A. About 16 miles round trip from my house.
Q. PMA—do you recall approximately how many days you worked there?
A. No, sir.
Q. More than one?
A. Yes.
Q. How far did you have to travel then?
A. I would say, at least 18 to 20 miles round trip from my house.
TRIAL EXAMINER: Is that a longshore job?

THE WITNESS: Yes.

TRIAL EXAMINER: Were they shape-up there? [247]

THE WITNESS: I don't know what the term means.

TRIAL EXAMINER: Sort of gone out of style, I think.

MR. JACKSON: It's in style in Brooklyn.

Q. (By Mr. Barton) How many days did you go there, seeking work?

A. Every day that I recall.

MR. BARTON: Nothing further.

MR. JACKSON: No further questions

TRIAL EXAMINER: That's all, Mr. Baker. You're excused. [248]

* * *

Whereupon,

EUGENE SCHILLING

was recalled as a witness by and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

Q. (By Mr. Jackson) Mr. Schilling, I hand you a document entitled "Distributorship Agreement." It bears the date 10-December-1964 on the cover page. It is a 13-page document bearing your signature on the 13th page, or what purports to be your signature, and that of Mr. McHann. I ask you if you can identify that for me.

A. That's the distributor agreement that we have with the independent distributors of Pepsi-Cola Bottling Company.

Q. Is this the one that was executed with Mr. McHann in December of 1964?

A. Yes, sir.

Q. Is this the same form contract that is executed with all this—these distributors?

A. Yes, sir.

Q. Or has that form undergone any change since that time?

A. No, sir.

Q. It is the form that is currently in effect?

A. Correct. [251]

* * *

MR. JACKSON: At this point, Mr. Examiner, if I may interrupt the testimony of Mr. Schilling, the counsel for General Counsel and myself have agreed that the following would be testified to by Mr. Schilling, Sr., by Mr. Gene Schilling and by his son, Mr. William Schilling, if they were examined on this subject: It pertains to certain attributes for the distributors' arrangement with the Pepsi-Cola and is offered to show that these distributors are independent contractors.

MR. BARTON: Before Mr. Jackson begins, I want to make it clear that as much as this is not a statement completely reduced to writing at the present time, my agreement is contingent to the statement as resubmitted on the record by Mr. Jackson.

TRIAL EXAMINER: All right.

MR. JACKSON: That, of course, goes without saying.

If called or examined on the subject, both Mr. Gene Schilling and Mr. William Schilling would testify that the distributors are required to provide their own trucks and to bear the cost or responsibility for and the cost of all [252] maintenance, insurance, licenses and so forth in connection with the truck and that, in fact,

they lease them from Hertz and are required to bear all the expenses in connection with their trucks and other equipment, as needed. If they do not share in any of the compensation or fringe benefits that employees of Pepsi-Cola do,—they don't have vacations or holidays or other fringe benefits—that there is no payroll withholding, and their compensation is derived from the difference between the price at which they purchase products from Pepsi-Cola and the price for which they sell the same product. And that their sole compensation—the independent distributors bear the loss of any theft or major breakage that occurs, that they are entitled to extend credit—it's up to them whether they extend credit to their customers—and they also bear the risk of any credit loss on this extent on credit they have extended themselves.

Their hours of work they are free to set, free to determine themselves, both as to frequency and regularity. Also, within their territory the frequency with which they call upon their customers and the orders with which their customers are called upon is a matter for their determination. They are required to furnish and pay for any and all additional labor or assistance which may be needed in running their routes. That is to say, in this respect: If they are sick or on vacation or if they need additional help in the servicing [253] of the routes. In other words, it is their obligation to see that the route is serviced properly and to supply whatever help is necessary and pay for whatever labor and help is needed to that end.

It is their determination, the distributors' determination as to what quantities are required. It is also within their province, if they wish to deal in non-competing products, they are permitted by their con-

tract to engage in other business, so long as they do not sell products which compete with Pepsi-Cola.

They are free to warehouse their products wherever they choose; they are also responsible for and obligated to keep their own accounting records and to handle their own finances, to retain and pay for their own [accountants]* and to the extent they are needed.

They, of course, arrange for filing papers—for payments of their own income tax returns.

They may not be terminated except in accordance with the provisions of the contract executed between them and Pepsi Cola.

That is the end of the statement.

MR. BARTON: I would be willing to stipulate that Mr. Schilling would so testify. I would object to the relevancy of the testimony.

TRIAL EXAMINER: All right. Objection overruled and the [254] stipulation is accepted. [255]

* * *

(Witness—Schilling; Examination by Jackson)

What qualities were considered by you important in determining whether or not you offered a distributorship to a given person?

A. We based that on past performance, a man's ability to handle his route, his finances, whether he was willing to do the extra things that are necessary to develop a route, how he serviced his accounts, if he had any calls for lack of service, any complaints he had on his route.

What we were after were self-starters, men that we did not want to lose to other companies when they were our best employees.

Q. Were there certain qualities that you found were required for distributors that were not necessarily required of driver-salesmen?

A. In order to be a successful distributor, you had to be able to organize your own work; you had to work without supervision. We weren't in a position, nor did we feel it would have to be necessary to have continual supervision on independent distributors. They would have to have the ability to set up their own routes, organize their own time, take care of their own customers in the proper manner. [257]

* * *

(Witness—Schilling; Examination by Jackson)

Q. Incidentally, was that a practice prior to the sale to All American, you invoiced the distributors regularly for goods that were purchased by them?

A. That is correct.

Q. Mr. Schilling, at the time of the sale by Golden State, of the sale of Pepsi Cola to All American, do you recall whether or not the consent of the various distributors were contained in the assignment of their contents?

A. Yes, sir.

Q. Was that part of the purchasing agreement or part of the closing document?

A. That was part of it, yes, sir.

Q. I show you a document that has been marked R-4, Respondent's Exhibit 4, bearing the date February 19, 1968, and in handwriting, entitled, "To Whom it May Concern," and bearing the signature of various individuals and ask you if you can identify that for me.

A. This is the distributor's consent of the assignment from Golden State to All American Beverages.

Q. Which is part of the original closing document?
A. That is correct, sir. [274]

* * *

(Discussion off the record.)

TRIAL EXAMINER: On the record.

In an off-the-record discussion the parties stipulated that the prior corporation known as Sam Snead and others became All American.

MR. BARTON: That was solely a name change. [276]

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IN THE

Supreme Court of the United States

October Term, 1972
No. .....

GOLDEN STATE BOTTLING COMPANY, INC., formerly d/b/a PEPSI-COLA BOTTLING COMPANY OF SACRAMENTO,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ALL AMERICAN BEVERAGES, INC., d/b/a PEPSI-COLA BOTTLING COMPANY OF SACRAMENTO,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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